

Introduction

- [1] On May 29, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is disputing an Eviction Notice pursuant to subsection 61.(5) of the *Act*.
- [2] Attached to the Application was an Eviction Notice (Form 4A) dated May 24, 2023, effective June 1, 2023, (the "Notice"). On May 31, 2023, the Landlord served the Notice on the Tenant by emailing it to the Tenant. The Notice was served on the Tenant for the following reason:

You or someone you have allowed on the property have disturbed or endangered others;

- [3] On July 17, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two Representatives for the Tenant, a witness for the Tenant, the Subtenant, and two Representatives for the Landlord participated.

Issue to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [4] On July 1, 2020, the Tenant and the Landlord entered into a fixed term tenancy agreement for the Residential Property. The Residential Property consists of a single unit in an apartment building. The Tenant is an authority which administers social housing in the province. The Tenant sublet the Residential Property to the Subtenant, who continues to occupy it. Neither the Representatives for the Landlord ("N.K." and "P.M."), nor the representatives for the Tenant ("L.J." and "T.H.") could recall the length of the fixed tenancy agreement. The Subtenant pays \$411 toward rent per month, payable on the first day of each month. There was no security deposit paid.

Tenant's Evidence and Submissions

- [5] The witness for the Tenant, A.M., testified that the Subtenant is capable of caring for himself and is fit to stay in the Residential Property. A.M. testified that she is often at the Residential Property and does not see the Subtenant leave things on the burner. The witness testified that she is aware of an incident where the smoke alarm was going off due to something burning on the stove and other tenants entered the unit and turned off the burner. A.M. testified that this was frightening for the Subtenant and that the Subtenant is fearful that neighbours will enter the Residential Property in the middle of the night.
- [6] A.M. further testified that the stovetop stays hot for 20 minutes or so after it is turned off, and this may be a cause for burning on the stovetop.
- [7] The Tenant further submitted in written evidence that the Subtenant only had the oven on for heat after the Landlord would not fix the heating system, and also that the Subtenant "never left the apartment with the oven left on".

Landlord's Evidence and Submissions

- [8] P.M. testified that she has received multiple calls from other tenants about the Subtenant leaving things burning on the stove three separate times. P.M. testified that she became aware of these incidents after the most recent incident, on or about May 2, 2023. P.M. testified that she became aware that tenants followed a burning smell into the Residential Property, got into the unit, saw a pot burning on the stove while the Subtenant was not there, turned off the stove and left.

- [9] P.M. testified that she was informed by a tenant that the Tenant was informed of the incidents involving the Subtenant, but the Tenant took no action.
- [10] P.M. testified that she contacted the Tenant regarding her safety concerns. P.M. submitted email records between herself, T.H. and L.J. In one email dated May 5, 2023, T.H. stated that Gordon admitted to leaving the stove on low when he went away, but that he would not do it again.
- [11] The Landlord further submitted a record of an anonymous text message exchange with a tenant who reported two incidents of the Subtenant leaving a pot on the burner, one of which the Subtenant was not home for at the time it was discovered. The tenant stated a belief that the Subtenant cannot hear the smoke detector and expressed concern for the safety of the Subtenant and other neighbours.
- [12] P.M. testified that she denies any malfunction of a heating system necessitating the Subtenant to leave the oven on for heat. The Landlord further submitted a statement from the building property manager stating that he has never been made aware of any heating issue.
- [13] P.M. testified that the Subtenant has shown a pattern of leaving things burning on the stove which has endangered himself, the tenants, and the building. P.M. testified that unfortunately she feels she is left with no choice but to evict due to the repeated safety violations of the Subtenant.

Analysis

- [14] The Landlord's reasons for the Notice are pursuant to subsections 61.(1)(d) of the Act which states:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

- [15] The Officer notes that in such matters where there is a dispute over a Notice of Termination by the Landlord, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice.
- [16] The Officer notes text message records from an anonymous tenant regarding safety concerns due to the Subtenant's actions. The Officer notes the email from T.H. which states that the Subtenant admitted to leaving the stove on when he left the building. The Officer further notes the testimony of A.M. that on one occasion a pot was burning on the Subtenant's stove, the smoke alarm was sounding, the Subtenant did not turn off the burner and silence the smoke alarm, leading to the intervention of other tenants.
- [17] The Officer finds based on the totality of the evidence that the Landlord has established that the Subtenant disturbed and endangered others, contrary to sub-subsection 61.(1)(d) of the Act. The Officer finds that repeated incidents of leaving pots burning the stove, and either not being present in the Residential Property or not taking action to remedy the situation, are serious safety concerns to other tenants and the Subtenant himself.
- [18] The Officer finds that the Notice is valid and the Application is denied.

Conclusion

[19] The Notice is valid and the Application is denied.

[20] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on July 31, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on July 31, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- B. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, this 20th day of July, 2023.

(sgd.) Colin Trewin

Colin Trewin
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within **7** days of this Order. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.