

Introduction

- [1] On June 27, 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 a Landlord Notice of Termination pursuant to subsection 61.(5) of the *Act*.
- [2] Attached to the Application was a Landlord Notice of Termination (Form 4) dated May 31, 2023, effective August 1, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons, pursuant to sub-subsection 15.(1)(a) of the *Rental of Residential Property Act*, RSPEI 1988, c R-13.1 ("*Rental of Residential Property Act*"):

I want possession of the premises for occupation by my children

- [3] On June 1, 2023, the Landlord served the Notice on the Tenant by hand delivery. On June 27, 2023, the Tenant served the Application on the Landlord by email.
- [4] On July 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a witness for the Tenant, the Landlord, and a witness 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

- [5] The Tenant and the Landlord entered into a verbal month-to-month tenancy agreement for the Residential Property beginning on February 2, 2019. The Residential Property is a single detached house. Rent is \$750.00 per month. The Tenant testified that there was a security deposit paid in the amount of \$350.00. The Landlord testified that he did not recall a security deposit having been paid.

Landlord's Evidence and Submissions

- [6] The Landlord testified that his son recently separated from his wife and will no longer be staying in the family home. As a result, the son needs the Residential Property to move into. The Landlord testified that the son will first pay rent for the home, then will purchase it at a later date when the separation agreement is finalized and he will have the funds for the purchase. The Landlord testified that the son is a PEI resident with children on PEI, but he regularly travels to various locations out of province for his work as a carpenter.
- [7] The Landlord submitted a signed statement from the Landlord's son stating that he needs to live at the Residential Property as a result of the separation with his wife, that he needs it for his children, and that he will rent it until he secures the funding to purchase it.
- [8] The Landlord further testified that he does not want to have rental properties anymore due to various issues and his inability to make repairs due to his age. The Landlord additionally made complaints regarding the cleanliness of the Residential Property, and the presence of the Tenant's dogs on the property.
- [9] The Landlord stated that he gave a notice period on the Form 4 of two months because that is what he believed was the applicable statutory requirement.

Tenant's Evidence and Submissions

- [10] The Tenant submitted that she believed she was being evicted because the Landlord is unwilling to make the necessary repairs to the Residential Property. The Tenant submitted photos of burst pipes and testified that she had to pay to fix the furnace, the cost of which she took out of her rent payments.
- [11] The Tenant further submitted that the Landlord enters the Residential Property unannounced and makes accusatory comments about the Tenant's dogs. The Tenant further submitted that she was informed that the son is rarely on Prince Edward Island and does not need to move into the unit.
- [12] At the hearing, the Tenant testified that she has arranged other living accommodations beginning on September 1, 2023, and is only looking to remain in the Residential Property until then, rather than attempt to have the Notice nullified.

Analysis

- [13] 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.
- [14] The Officer notes that the Form 4 Notice was made with the prior form applicable under the *Rental of Residential Property Act* prior to the enactment of the current Act.
- [15] The Officer notes the application of section 30 of the *Interpretation Act*, RSPEI 1988, c I-8 ("*Interpretation Act*") which states:

Effect of deviation from specified form

Where an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if

- (a) the deviations do not affect the substance;*
- (b) the deviations are not likely to mislead; and*
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.*

- [16] The Officer notes that the relevant section on the current Form 4B is clause (a), which states:

I want possession of the rental unit for my child or parent

- [17] Clause (a) of the current Form 4B is pursuant to sub-subsection 62.(1)(c) of the Act, which states:

Landlord's notice for landlord's use of property

- (1) A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by*

- (a) a child, parent or a dependent of the landlord or the landlord's spouse.*

- [18] The Officer finds that while the Landlord did not use the proper form, the application of the *Interpretation Act* allows the Notice to be proceed under clause (a) of the current Form 4B. The Officer finds that the Tenants were not prejudiced by the use of the incorrect form. The Officer finds that the Tenant was aware of the reason for the Notice of termination and was given the opportunity to make full answer and defence.

- [19] The Officer finds, based upon the oral testimony of the Landlord and the signed statement of the Landlord's son, that the Landlord's son will be occupying the Residential Property in good faith for at least one year.
- [20] The Officer notes that the Landlord failed to provide the required notice period in the Notice. Landlords must provide a minimum of four months' notice, and further, the date of termination must be the day a period of the tenancy ends, pursuant to subsection 62.(2) of the Act, which states:

Period of Notice

- (2) *The date for termination specified in the notice of termination shall be **at least four months after the notice is given and shall be the day a period of the tenancy ends** or, where the tenancy is for a fixed term, the end of the term [emphasis added].*

- [21] The Notice was provided to the Tenant on June 1, 2023. A four-month notice period from this date would have October 31, 2023 as the required vacate date. This would reflect four months, in addition to up until the day a period of the tenancy ends. As this is a month-to-month payable on the first of each month, the last day of a month is when each period of the tenancy ends. June 1, 2023 was the first day of a new rental period. Providing notice on June 1, 2023 therefore results in the minimum notice period extending until October 31, 2023.
- [22] The Officer notes that the Tenant indicated that she plans to leave the Residential Property on September 1, 2023, regardless. The Officer notes that the Tenant may end the tenancy agreement earlier than the ordered termination date, provided she gives at least ten days' written notice to the Landlord, pursuant to subsections 69.(1) and (2) of the Act, which state:

Tenant may end tenancy early following notice

- (1) *Where a landlord gives a tenant a notice of termination of a tenancy under section 62, 63, 64, 66 or 67, the tenant may end the tenancy early by*
- (a) ***giving the landlord at least 10 days' written notice of termination** on a date that is earlier than the effective date of the landlord's notice; and*
 - (b) *paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies [emphasis added].*

Landlord shall refund rent

- (2) *Where the tenant paid rent before giving a notice of termination under subsection (1), on receiving the tenant's notice, the landlord shall refund any rent paid for a period after the effective date of the tenant's notice.*

Conclusion

- [23] The Application is allowed and the termination date of the Notice shall be extended to October 31, 2023.
- [24] The tenancy agreement shall terminate effective 5:00 p.m. on October 31, 2023 and the Tenant shall vacate by this time and day.

IT IS THEREFORE ORDERED THAT

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

DATED at Charlottetown, Prince Edward Island, this 21st 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 **20** 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.