

## Introduction

- [1] On July 2, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord served the Application on the Tenant by hand delivery. The Landlord is seeking the following remedies pursuant to the *Act*:

*To request my tenant vacate the rental unit and ordering the Sheriff to put me into possession of the rental unit.*

- [2] Attached to the Application was an Eviction Notice (Form 4) dated February 28, 2023, effective June 30, 2023 (the "Notice"). The Landlord served the Notice on the Tenant on March 1, 2023 by posting it to the Tenant's door. The Notice was served on the Tenants for the following reasons

*I want possession of the premises for occupation by me (s. 15(1)(a) of Act).*

- [3] On July 21, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and the Tenant participated in the hearing.

## Issue to be Decided

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

## Summary of the Evidence

- [4] In the summer of 2020, the Landlord and the Tenant entered into a written fixed-term rental agreement for the Residential Property. The tenancy agreement has since converted to a month-to-month tenancy agreement. The Residential Property is one half of a duplex. Rent is \$1,455.00 per month, due on the first day of the month. A security deposit was not required.

### Landlord's Evidence and Submissions

- [5] The Landlord testified that he requires the Residential Property to live in. The Landlord testified that he originally purchased the property, lived in one half of the duplex, then moved away for university and renting out both sides. The Landlord testified that he has since finished his education and wants to live in the Residential Property.
- [6] The Landlord testified that he has no other place to stay and has had to sleep on the couches of various friends while he has waited for the Tenant to leave the Residential Property.

### Tenant's Evidence and Submissions

- [7] The Tenant testified that she has been diligently trying to find another place to live without success. The Tenant testified that finding a suitable residence that meets her needs is very difficult. The Tenant submitted photo evidence of her correspondences to landlords on rental website listings trying to find a place to live.

## Preliminary Matter

- [8] The Officer notes on April 8, 2023, the Government of Prince Edward Island repealed the former legislation, the *Rental of Residential Property Act* and proclaimed the *Residential Tenancy Act*, RSPEI 1988, c R-13-11 ("*RTA*"). This means the new *RTA* is the governing law as of April 8, 2023, for landlord and tenant disputes on Prince Edward Island.

- [9] The Officer notes that the *RTA* has transitional provisions that state, *inter alia*:

**Section 112(1) - Proceedings**

*Any hearing or proceeding that was started under the former Act, but not concluded before the coming into force of this Act, shall be concluded in accordance with the provisions of the former Act as though that Act were still in force.*

- [10] In this case, this matter pertains to a Notice which was served prior to the proclamation of the *RTA*, therefore, the Rental Officer will be applying the *Rental of Residential Property Act and its Regulations* (the former Act) in the hearing of this matter.

**Analysis**

- [11] A landlord may evict a tenant for personal use pursuant to section 15(1)(a) of the *Act*, which states:

***Personal use, renovations, etc.***

*(1) Where the lessor in good faith seeks to*

- (a) have possession of the premises for occupation by himself, his spouse, children or parents, or the parents of his spouse;*

*the lessor may serve the lessee with a notice of termination to be effective not less than two months after it is served.*

- [12] A Tenant may challenge an eviction for landlord personal use pursuant to subsections 16.(1.1), 16.(2.1), and 16.(3) of the *Act*, which state:

***Application to set aside notice - section 15***

*(1.1) A lessee who has received notice of termination for any of the reasons set out in section 15 may apply to the Director for an order setting aside the notice.*

***Time for application***

*(2.1) An application under subsection (1.1) shall be made by a lessee not later than twenty days after being served with the notice.*

***Idem***

*(3) Where the lessee does not bring an application to set aside the notice, he shall be deemed to have accepted the termination on the effective date of the notice.*

- [13] A landlord may seek delivery of possession of the unit pursuant to subsection 6.(10) of the *Act*, which states:

***6.(10) Delivery of Possession***

*Where notice of termination has been given in accordance with this Act, and all remedies in relation thereto have been exhausted, the lessee shall deliver up possession of the residential premises.*

- [14] Based on the evidence, the Officer finds that the Notice was served for occupation for personal use. As a result, the Landlord had a valid reason for serving the Notice and the Notice was served in accordance with the Act. The evidence also establishes that the Tenant did not file a 'set aside application (Form 6) within 20 days of being served with the Notice, pursuant to subsections 16.(1.1) and 16.(2.1) of the *Act*. The Tenant is therefore deemed to have accepted the Notice, pursuant to 16.(3) of the *Act*. The Officer therefore finds that the Landlord has established a valid basis for terminating the rental agreement for personal occupation.
- [15] The Officer finds based on the evidence that the Notice is valid and the Application is allowed in part.

### Conclusion

- [16] The Notice is valid and the Application is allowed.
- [17] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on August 1, 2023, and the Tenants 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 August 1, 2023, and the Tenant 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 25th day of July, 2023.

(sgd.) Colin Trewin  
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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.