

Introduction

- [1] On June 8, 2023, the Tenants 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 a Notice of Termination by Lessor of Rental Agreement (Form 4) dated June 1, 2023, effective June 30, 2023, (the "Notice"). On June 1, 2023, the Landlord served the Notice on the Tenants personally. The Notice was served on the Tenants for the following reason:

An act or omission on your part or on the part of a person permitted in or on the residential premises/property by you has seriously impaired the safety or lawful right or interest of me or other lessees in the residential property. (s. 14(1)(e) of Act).

- [3] The Particulars on the Notice stated:

"You have falsely claimed to have sold my generator stored in my shed and falsely claimed to have returned the money of the sale to me. Furthermore, you have expressed your intention to slander my name with professional people so nobody would work for me."

- [4] On July 13, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants and the Landlord participated.

Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [5] On June 1, 2021, the Landlord and Tenants entered into a written month to month tenancy agreement for the Residential Property. The Residential Property consists of a single unit in a four-unit building. Rent is \$975.00 per month due on the first day of the month. A security deposit of \$975.00 was paid.

Landlord's Evidence and Submissions

- [6] The Landlord stated that G.C. told K.H. (K.H. works for the Landlord) that he had sold the Landlord's generator, which was in the shed at the Residential Property. G.C. told K.H. that after he had sold the generator that he had given the Landlord part of the proceeds. The Landlord stated G.C. also told K.H. that someone had broken into the shed and G.C. had to put his own lock on the shed. The Landlord stated G.C. did not tell the Landlord about the break in until that day.
- [7] The Landlord stated he did have an initial discussion with G.C. about selling the generator on his behalf but no final decision was made. The Landlord stated that he does not owe the Tenants \$400.00 as stated by the Tenants. The Landlord stated the Tenants actually owe the Landlord money.
- [8] The Landlord stated G.C. has also been besmirching his name to contractors to ensure that no contractor will want to work for the Landlord. The Landlord stated G.C. had stated bad things about the Landlord and that the Landlord was a bad Landlord. The Landlord submitted an email into evidence that he had sent to the Tenants about this issue.

- [9] The Landlord submitted into evidence a copy of a police report dated April 25, 2023. The report was in relation to the Landlord calling the police to report a stolen generator on March 28, 2023. The report stated that the police advised G.C. that he was unable to withhold the property for payment and the generator was returned. The police report stated the theft was determined to be unfounded.
- [10] K.H. stated that she attended the Residential Property to retrieve the generator at the request of the Landlord. K.H. spoke to G.C. and G.C. told her that the generator had been sold. G.C. told K.H. that he sold it and gave part of the proceeds to the Landlord. K.H. tried to get G.C. to sign a bill for the Landlord stating that the Landlord owed G.C. a certain amount of money for doing work for the Landlord. G.C. refused to sign the bill and G.C. stated he knew people in the contracting world. The Landlord submitted copies of email messages into evidence between the Landlord and K.H. after K.H. spoke to G.C. about the generator.

Tenant's Evidence and Submissions

- [11] G.C. stated the Landlord told G.C. that he could sell the generator for \$400.00. G.C. stated he had completed some work for the Landlord and the Landlord owed G.C. \$400.00. G.C. asked the Landlord if the Landlord would give the generator to the Tenants for \$325.00 and then pay the Tenants the remaining money they were owed. G.C. stated the Landlord agreed to this deal.
- [12] G.C. stated he did tell K.H. that the generator was sold, but because he had made the deal with the Landlord, G.C. did not think it was K.H.'s business to know what happened to the generator. G.C. stated the police attended the Residential Property and spoke to G.C. about the matter. The police told G.C. to return the generator to the shed and G.C. put the generator back in the shed. G.C. stated he never told the police the generator was stolen as G.C. thought he owned the generator after the discussion he had with the Landlord. G.C. stated the police report shows that the police believed him that the generator was not stolen.
- [13] G.C. denied that he was besmirching the Landlord's name to other contractors. G.C. stated he could if he wanted to but stated he has not done so. G.C. stated someone broke the lock on the shed but the shed was not broken into. G.C. placed his own lock on the shed to secure the shed and he was going to give the Landlord a copy of a key. G.C. stated K.H. eventually placed the Landlord's lock back on the shed.
- [14] T.S. stated she overheard the conversation between the Landlord and G.C. when the deal was made for the generator. T.S. stated the conversation was on speaker phone and she was present with G.C. when the deal was made.

Analysis

- [15] The Landlord served the Tenants with an eviction notice which was previously a part of the *Rental of Residential Property Act (the "Former Act")*, which was replaced with the *Residential Tenancy Act* on April 8, 2023. The reason for eviction on the Notice stated:

"An act or omission on your part or on the part of a person permitted in or on the residential premises/property by you has seriously impaired the safety or lawful right or interest of me or other lessees in the residential property." (s. 14(1)(e) of Act)

- [16] The Officer notes subsection 14.(1)(e) of the *Former Act* is similar to subsection 61.(1)(d)(ii) of the current *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

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

- [17] The Landlord stated G.C. *"falsely claimed to have sold my generator stored in my shed and falsely claimed to have returned the money of the sale to me."* G.C. stated he believed the matter of the generator was not any of K.H.'s business, as he had already made the deal with the Landlord. The police report stated the theft of the generator was unfounded.
- [18] K.H. stated G.C. told her that G.C. may speak to other contractors regarding the Landlord. The Landlord stated G.C. did slander his name to another contractor. However, the Landlord did not have any witnesses provide affirmed testimony at the hearing with regards to hearing such comments. G.C. denied that he slandered the Landlord's name to anyone.
- [19] The Landlord stated there was a break in to the shed at the Residential Property and the Tenants did not tell the Landlord. G.C. stated that only the lock was broken on the shed and he put his own lock on it to secure it. G.C. stated he was going to give a key to the Landlord but K.H. put the Landlord's lock back on the shed before he was able to provide a key.
- [20] The Officer notes that there was conflicting evidence provided by the parties during the hearing. However, the evidentiary onus rests on the Landlord where an eviction of a Tenant is sought for alleged behavioral issues. In this case, the Officer finds that the Landlord not provided sufficient evidence, on a balance of probabilities, to satisfy the Landlord's burden of proof that there has been a breach of subsection 61.(1)(d)(ii) of the *Act*

Conclusion

- [21] The Notice is invalid and the Application is allowed.
- [22] The Tenancy Agreement between the parties continues in full force and effect.

IT IS THEREFORE ORDERED THAT

- A. The Tenancy Agreement between the parties continues in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 25th day of July, 2023.

(sgd.) Mitchell King

Mitchell King
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.