

Introduction

- [1] On June 2, 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 June 2, 2023, effective July 31, 2023, (the "Notice"). On June 2, 2023, the Landlord served the Notice on the Tenant by email. The Notice was served on the Tenant for the following reasons:

You or someone you have allowed on the property has caused damage to the rental unit.

You have failed to comply with a material term of the tenancy agreement.

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

Issue to be Decided

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

Summary of the Evidence

- [4] In June of 2018 a previous landlord and the Tenant entered into a written month-to-month tenancy agreement for the Residential Property. The tenancy agreement continued when the current Landlord purchased the Residential Property. The Residential Property consists of a single unit in an 18-unit building. Rent is \$885.00 per month due on the first day of the month. A security deposit of \$425.00 was paid.

Landlord's Evidence and Submissions

- [5] The Representative stated the Tenant has not provided him proof that the Tenant has tenant's insurance. The Representative stated the Tenant was asked twice approximately six months ago to provide proof of tenant's insurance and he has not done so. Other tenants complain of the smell of cigarette smoke in the hallway which they say is coming from the Residential Property. Approximately six months ago the Representative saw the Tenant, or a female, through a window, smoking in the Residential Property.
- [6] In February of 2023 the Representative had to call a plumber to fix a leak in the Residential Property. Water was leaking into the unit below the Residential Property and the plumber told the Representative that the Tenant's washing machine may have been leaking for more than a month. The Representative stated the Tenant did not inform the Representative of the leak. The Representative submitted photos into evidence of the damage caused by the leaking washing machine.

Tenant's Evidence and Submissions

- [7] The Tenant stated he does not smoke in the Residential Property. The Tenant stated he does not have a partner so there would not be a female smoking in the Residential Property. The Tenant stated the Representative never mentioned the smoking issue to him. He also stated the smoking issue was from February 2023 and the eviction notice was served in June 2023. The Tenant stated the previous landlord did not require that he purchase tenant's insurance.

- [8] The Tenant stated he notified the Representative when he noticed the water leak after he was visiting the unit below the Residential Property. He stated a pipe broke in the wall three years ago and it caused similar water damage. The Tenant stated did not notice any leak coming from his washing machine until the plumber found the leak. He stated he would have notified the Representative if he saw a leak. He also stated the leak occurred in February 2023 and the eviction notice was served in June 2023.

Analysis

- [9] The reasons for eviction stated on the Notice are:

You or someone you have allowed on the property has caused damage to the rental unit.

You have failed to comply with a material term of the tenancy agreement.

- [10] With regards to the damage caused by the leaking washing machine, the Tenant stated he notified the Representative when he saw the water leak in the unit below the Residential Property. The Tenant stated he did not know the leak was coming from his washing machine. The Officer notes that the Landlord also waited four months to issue an eviction notice for this issue.

- [11] With regards to the smoking issue, the Tenant stated he does not smoke in the Residential Property and does he not have a female partner who would be smoking in the Residential Property. The Officer notes that the Landlord was not able to identify who was actually smoking in the Residential Property. The Officer notes that the Landlord also waited four months to issue an eviction notice for this issue. The Representative did not have any witnesses provide affirmed testimony at the hearing to state they have smelled smoke coming from the Residential Property.

- [12] Furthermore, the Landlord did not provide the Tenant with a written warning as required by subsection 61.(1)(h)(ii) of the Act which states:

61.(1) A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(h) the tenant

(i) has failed to comply with a material term of the tenancy agreement, and

(ii) has not corrected the situation within a reasonable time after the landlord has given written notice to do so.

- [13] With regards to the tenant's insurance, subsection 10.(2) of the Act states:

A tenancy agreement may be renewed by the landlord and tenant and the renewed tenancy agreement continues the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with this Act.

- [14] The Officer notes that when the new Landlord bought the Residential Property, the Tenant was only bound by the obligations which existed under the tenancy agreement he entered into with the former landlord. The Tenant stated the former landlord did not require tenant's insurance and the Representative did not dispute this. The Representative did not submit into evidence any updated tenancy agreement signed by the Tenant which stated the Tenant agreed to purchase tenant's insurance.

- [15] 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 breaches of the *Act*. In this case, the Officer finds that the Landlord has not provided sufficient evidence, on a balance of probabilities, to satisfy the Landlord's burden of proof that the Tenant has caused damage to the Residential Property or that the Tenant has breached a material term of the tenancy agreement.

Conclusion

- [16] The Notice is invalid and the Application is allowed.
- [17] 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.