

Introduction

- [1] On July 4, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was served on the Landlord by hand delivery on July 4, 2023. The Application is disputing an Eviction Notice pursuant to subsection 61.(5) of the *Act*. On the Application, the Tenant further requested a return of security deposit pursuant to subsection 40.(1) of the *Act*, and a finding that the Tenant has been evicted in bad faith, pursuant to subsection 65.(1) of the *Act*.
- [2] The Officer notes that he is unable to award a return of a security deposit or make a finding that the Tenant has been evicted in bad faith as the tenancy agreement has not ended and remains in force.
- [3] Attached to the Application was an Eviction Notice (Form 4A) dated June 29, 2023, effective July 30, 2023, (the "Notice"). On June 29, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's front door. The Notice was served on the Tenant for the following reason:

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

- [4] On July 24, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two Representatives for the Landlord ("D.M." and "R.M."), the Tenant, and a witness for the Tenant participated.

Issue to be Decided

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

Summary of the Evidence

- [5] Around 2016, the Tenant and the Landlord entered into a verbal month-to-month agreement for the Residential Property. The Residential Property consists of a single detached house. Rent is \$757.50 per month, paid on the first of each month. A security deposit of \$340.00 was required and paid.

Landlord's Evidence and Submissions

- [6] R.M. testified that on or around June 25, 2023, the Tenant had the 11 by 12-foot deck on the Residential Property removed.
- [7] R.M. testified that years prior, she had a verbal agreement regarding the deck with the Tenant's husband who has since passed away. R.M. testified that the Tenant's husband approached the Landlord about removing the small wooden steps and platform by the door, and replacing it with a larger deck. R.M. testified that they had agreed that this was allowed, but that the new structure would need to remain at the Residential Property permanently. R.M. submitted that the Tenant advised she would put the old structure back, but R.M. did not see this as being in keeping with the agreement made with the Tenant's husband.
- [8] R.M. further testified that she gave the Notice immediately upon seeing the removal of the deck and did not give the Tenant a warning to restore the deck.
- [9] R.M. and D.M. further testified that the removal of the deck damaged the property as the siding on the deck was made in consideration of the larger deck, which has since been removed.
- [10] The Landlord submitted photo evidence of the Residential Property lacking a deck by the door entryway. D.M. testified that the dimensions of the original steps and platform

- [11] R.M. testified that she had provided a prior notice of termination, effective November 30, 2023, to the Tenant because she intends to sell the Residential Property. R.M. testified that she planned to list the property after November 30, 2023 when the Tenant has left. R.M. testified that the Residential Property has not yet been listed for sale, there is no purchaser, no agreement of purchase and sale, and no closing date.

Tenant's Evidence and Submissions

- [12] The Tenant advised that she removed the deck in response to receiving the notice of termination, effective November 30, 2023, regarding sale of the Residential Property. The Tenant advised that if she was being forced to leave, she wanted to take the deck with her as it was her property.
- [13] The Tenant testified that the original wooden step structure by the door was rotting and insufficient. The Tenant testified that her husband had agreed with the Landlord that he could replace the original structure. The Tenant testified that it was never agreed that the replacement structure would stay permanently on the Residential Property. The Tenant testified that when the replacement deck was installed, the original step structure was discarded.
- [14] The Tenant testified that she has intended to provide the Residential Property with a new step structure akin to the original, however she has not been able to have it made yet. The Tenant testified that she planned to have her brother-in-law build the replacement structure, however he recently had a medical procedure and it would likely be 6-8 more weeks before he can do so. The Tenant testified that she has not contacted any other person or company about constructing the structure.
- [15] The Tenant further testified that she had a carpenter look at where the deck was removed, and no damage to the Residential Property was found.

Preliminary Matter

- [16] The Officer notes R.M.'s testimony that a separate notice of termination was given to the Tenant, effective November 30, 2023, due to the Landlord planning to sell the property. The Officer notes that the Residential Property has not been listed, there is no agreement of purchase and sale, there is no buyer, and there is no sale date.
- [17] The Officer notes the requirements for terminating a tenancy agreement due to sale of the residential property pursuant to subsections 63.(1) and 63.(3) of the *Act*, which state:

Landlord's notice when purchaser personally requires unit

- (1) *A landlord of a residential property that contains fewer than three rental units who has entered into an agreement of purchase and sale of the residential property may, on behalf of the purchaser, give the tenant of a rental unit in the residential property a notice of termination if the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation by*
- (a) *the purchaser;*
 - (b) *the purchaser's spouse;*
 - (c) *a child, parent or a dependent of the purchaser or the purchaser's spouse; or*
 - (d) *a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child, parent or dependent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the residential property or mobile home park in which the rental unit is located.*

Affidavit required

A notice of termination under subsection (1) or (2) is valid only if the tenant has been provided with a sworn affidavit certifying that the purchaser in good faith requires possession of the rental unit for a purpose set out in subsection (1) or (2)

- [18] The Officer reminds the parties that the requirements of the *Act* concerning sale for purchaser personal use must be met for a notice of termination to be valid.

Analysis

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

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

(f) the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property;

- [20] 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.
- [21] The Officer notes that the Tenant's decision to remove the deck was a result of the Landlord's invalid notice of termination due to a non-existent sale of the Residential Property. The Officer notes that the Tenant was not provided with a warning by the Landlord to replace the deck at the Residential Property.
- [22] The Officer also finds that the Tenant discarded the original step structure without permission. The Officer finds that the Tenant has made some effort to have the original step structure replaced.
- [23] The Officer finds based on the totality of the evidence that the Landlord has failed to establish that eviction is warranted at this time.
- [24] The Officer orders that the Tenant restore the step structure to its original form at the time when the Tenant occupied the Residential Property seven years ago. The Tenant shall have until September 30, 2023 to make this restoration.
- [25] If the Tenant has not completed the work by this date as ordered, she risks being in contravention of subsection 61.(l) of the *Act*, which is a ground for termination of the tenancy agreement.
- [26] The Officer finds that the Notice is invalid and the Application is allowed.

Conclusion

- [27] The Notice is invalid and the Application is allowed.
- [28] The Tenant shall, by September 30, 2023, restore the back patio of the Residential Property to its original form at the time the Tenant first occupied the Residential Property.
- [29] The tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed and the Notice is invalid.
- B. The Tenant shall, by September 30, 2023, restore the back patio of the Residential Property to its original form at the time the Tenant first occupied the Residential Property.
- C. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 26th 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.