

Introduction

- [1] On June 26, 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 26, 2023, effective July 26, 2023, (the “Notice”). On June 26, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant’s door. The Notice was served on the Tenant for the following reasons:

You are repeatedly late in paying rent;

You or someone you have allowed on the property have disturbed or endangered others;

and

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

- [3] On July 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant and a representative for the Landlord (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] On January 6, 2023, the Tenant and the Landlord entered into a written fixed-term one-year tenancy agreement for the Residential Property. The Residential Property consists of a single unit in an 18-unit apartment building. Rent is \$833.00 per month due on the first day of the month. A security deposit of \$416.50 was paid.

Landlord’s Evidence and Submissions

- [5] The Representative submitted that the Tenant has repeatedly been late paying rent. The Representative testified that since January, the Tenant has been late paying rent every month except July, being five months straight from February to June. The Representative further testified that the Tenant still owes \$50 in fees for insufficient funds for withdrawal. The Representative testified that the Tenant was never given permission to make payments later than the first of the month.
- [6] The Representative testified that the Tenant has caused serious disturbances to other tenants in the building. The Representative testified that she has received at least six calls from other tenants with complaints of screaming, fighting, and possible domestic abuse involving the Tenant and her partner. The Representative testified that police have attended the Residential Property, although the Representative testified that the one time she called the police, it ended up being based on a misunderstanding. The Representative submitted an anonymous complaint letter from a tenant describing “violent yelling”, police attending multiple times, strong smells of marijuana and unchanged cat litter.
- [7] The Representative testified that the Tenant allowed her partner to live in the Residential Property permanently without permission from the Landlord. The Representative testified that the Tenant’s partner has a recent violent criminal conviction and scares other tenants. The Landlord testified that the Tenant’s partner would not have been approved to live in the Residential Property. The Landlord submitted that this is a violation of a material term of the tenancy agreement.

Tenant's Evidence and Submissions

- [8] The Tenant testified that all late payments were discussed with the Landlord in advance. The Tenant submitted email records of correspondence with the Landlord advising at various times that she would be making the rent payments later than the first of the month.
- [9] The Tenant submitted that she and her partner are quiet and never loud. However, the Tenant further testified that on two occasions she and her partner had arguments in the Residential Property of considerable volume. The Tenant further testified yelling down the hall on one occasion due to a health emergency.
- [10] The Tenant submitted that her boyfriend was originally staying at the Residential Property intermittently, but that he later moved in permanently. The Tenant testified that she was willing to provide the Landlord with his contact information to add him to the tenancy agreement.
- [11] The Tenant further testified that she made noise complaints to the Landlord of running washing machines at night, yelling from units down the hall, and stomping overhead, which were not dealt with by the Landlord.

Analysis

- [12] The Landlord's reasons for the Notice are pursuant to subsections 61.(1)(b), (d) and (h) of the *Act* which state:

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

- (b) the tenant is repeatedly late in paying rent*
- (d) the tenant or a person permitted on the residential property by the tenant has*
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) put the landlord's property at significant risk*
- (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] 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 Landlord did not show a material term of the tenancy agreement prohibiting the Tenant from permitting an additional occupant. The Landlord has not established on the evidence that a material term of the tenancy agreement was breached on this ground.
- [15] The Officer finds that based on the totality of the evidence, the Landlord has established that the Tenant has repeatedly been late in paying rent, contrary to sub-subsection 61.(1)(b) of the *Act*. The Officer notes that since the Tenant moved into the Residential Property in January, rent has been late every subsequent month, except July, accounting for five straight months of late payments.

- [16] The Officer further finds that the Tenant or individuals allowed on the Residential Property by the Tenant significantly and unreasonably disturbed others, contrary to subsection 61.(1)(d) of the *Act*.
- [17] The Officer notes the Landlord's testimony of receiving numerous complaints from other tenants regarding loud arguments and screaming involving the Tenant and her partner. The Officer further notes the complaint letter of another tenant, submitted by the Landlord, describing serious disturbances caused by the Tenant and her partner. The Officer further notes that the Tenant admitted to two occasions of loud arguments in the Residential Property, and further submitted a copy of a separate tenant complaint letter regarding their disturbances.
- [18] The Officer finds based on the evidence that the Notice is valid and the Application is allowed.

Conclusion

- [19] The Notice is valid and the Application is denied.
- [20] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on July 31, 2023. The Tenant and all occupants 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 July 31, 2023. The Tenant and all occupants 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 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 **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.