

Introduction

- [1] On June 29, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Tenant served the Landlord with the Application by hand delivery on June 29, 2023. 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 22, 2023, effective July 31, 2023, (the "Notice"). On June 2, 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 reason:

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

- [3] On July 27, 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 June 1, 2017, the Tenant and the Landlord entered into a written fixed-term one-year tenancy agreement for the Residential Property. The tenancy agreement then continued on a month-to-month basis. The Residential Property consists of one half of a duplex. Rent is \$1,019.89 per month due on the first day of the month. A security deposit of \$650.00 was required and paid.

Landlord's Evidence and Submissions

- [5] The Representative testified that there have been cleanliness issues with the Tenant for years. The Representative testified that the Tenant has been hoarding and that the property is extremely cluttered, unclean, and unsafe. The Representative testified that he has received numerous complaints regarding the appearance of the Residential Property from other neighbours, as well as the Town of Montague. The Representative testified that he has warned the Tenant to clean the Residential Property over a dozen times, by text message, phone call, and face-to-face conversations. The Representative further testified that he offered to help dispose of the trash, which the Tenant did not accept.
- [6] The Representative testified that the Tenant was given one week's notice that real estate agents would be entering the home for a walkthrough on June 21, 2023. The Representative testified that the real estate agents told him that the Residential Property was in such a state of uncleanliness that it could not be listed. The Representative took pictures of the Residential Property which were submitted into evidence. These photos depicted piles of items stacked on top of each other, collections of garbage within the home, and clutter on various surfaces within the home. The Representative further submitted photos of the outside of the Residential Property depicting items strewn about the side of the unit, a deflated pool, trash overflowing from a garbage bin, and various garbage bags on the lawn.

- [7] The Representative submitted into evidence an email from his insurance company, dated July 14, 2023. The email stated that following an insurance inspection performed on July 13, 2023, the Residential Property's insurance policy will be cancelled. The reasons given were that the conditions of the inside of the unit posing a fire hazard due to the numerous extension cords with items plugged in with close contact to clothing, household items, and other flammable items against electric wall heaters. Additionally, the insurance agent noted that the items in the unit was overwhelming, posing a fire risk as well as a liability issue to anyone entering the Residential Property. The insurance agent further stated that the fire risk puts the tenants of the adjacent unit at risk.
- [8] The Representative testified that he has given the Tenant many opportunities to rectify the condition of the Residential Property, without success. The Representative testified that he feels responsible for the safety of the tenants of both sides of the duplex and he cannot allow the current conditions to remain.

Tenant's Evidence and Submissions

- [9] The Tenant provided a written statement saying that on June 21, 2023, the Representative came to the Residential Property, wanting to come inside. The Tenant submitted that he came inside and saw that the house was not clean, then proceeded to evict her without written warning, and raised his voice toward her.
- [10] Then the Tenant testified that she was given a week's notice of the Representative coming into the Residential Property and she cleaned it to the best of her ability. The Tenant testified that she has since cleaned the Residential Property and it is now in a clean condition. The Tenant submitted photos depicting the interior and exterior of the Residential Property after her efforts to clean it.
- [11] The Tenant testified that she has been unable to adequately clean the Residential Property because of various health issues affecting her and her son. The Tenant testified that her attending various doctors' appointments and spending time at the hospital are unique circumstances which must be considered.
- [12] The Tenant testified that some of the pictures submitted by the Representative of the outside of the Residential Property were from 2020 when the Tenant's mother was very sick and the Tenant was tending to her.

Analysis

- [13] The Landlord's reasons for the Notice are pursuant to subsections 61.(1)(h) 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:

(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.

- [14] Tenants are responsible for ordinary cleanliness of units as a material term of all tenancy agreements pursuant to section 28.(3) of the statutory conditions of the Standard Form Tenancy Agreement, which states:

Tenant responsible for ordinary cleanliness

(3) A tenant is responsible for

- (a) ordinary cleanliness of the rental unit and all areas of the residential property used exclusively by the tenant, except to the extent that the tenancy agreement expressly requires the landlord to clean it; and*
- (b) proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.*

- [15] 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.
- [16] The Officer finds that the Tenant has failed to maintain the Residential Property to a standard of ordinary cleanliness as required as a material term of the tenancy agreement. The Officer finds that the testimony and photographic evidence submitted by the Representative establishes that the Residential Property is insufficiently maintained to meet the statutory conditions of the tenancy agreement. The Officer notes the fire risk posed by the quantity of items within the Residential Property, including flammable items in contact with various appliances. The Officer notes the Representative's testimony of receiving numerous complaints from the Town of Montague and neighbours. The Officer notes the cancellation of the Landlord's insurance policy due to unsafe conditions present at the Residential Property.
- [17] The Officer further notes that the Tenant was advised of her need to clean the Residential Property numerous times, including through writing via text message.
- [18] Based on the totality of the evidence presented, the Officer finds that the Notice is valid and the Application is denied.

Conclusion

- [19] The Notice is valid and the Application is denied.
- [20] The tenancy agreement shall terminate effective 12:00 p.m. (noon) on August 4, 2023. The Tenant 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 12:00 p.m. (noon) on August 4, 2023. 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 28th 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.