

Introduction

- [1] On June 29, 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 an Eviction Notice (Form 4A) dated June 27, 2023, effective July 31, 2023, (the "Notice"). The Notice was served on the Tenants for the following reasons:

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 June 27, 2023, the Landlord served the Notice on the Tenants by posting it on the Tenant's door.
- [4] On July 25, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants and a representative for the Landlord (the "Representative") participated.

Issue to be Decided

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

Summary of the Evidence

- [5] Tenant and the Landlord entered into a written fixed-term one-year tenancy agreement for the Residential Property in approximately May of 2018. The tenancy agreement has since converted to a month-to-month agreement. The Residential Property consists of a single unit in an apartment building. Rent is \$1,287.00 per month due on the first day of the month. A security deposit of \$800.00 was paid.

Landlord's Evidence and Submissions

- [6] The Representative testified that the Tenants ("B.B." and "F.M.") have disturbed and endangered others, and violated the material term of quiet enjoyment in the tenancy agreement. The Representative testified that B.B. has received numerous complaints from other tenants regarding her behaviour for years. The Representative testified that B.B. has been aggressive, rude, accusatory, and harassing to others. The Representative further testified that the Tenants improperly stored propane tanks on the Residential Property.
- [7] The Representative testified that B.B. frequently watches other tenants, argues with them, and verbally harasses them. The Representative further testified that B.B. has been racist to other tenants and has used a racially-based insult against another tenant. The Representative submitted two letters from other tenants describing being harassed by B.B. and the negative impact it has had on them. The Representative submitted a further statement from an appliance company stating that due to B.B.'s extreme level of abuse of their staff, their lead technician will not return to service her unit.

[8] The Representative testified that the Landlord served a prior notice of termination to the Tenants due to similar behaviour. However, the Representative testified that the Landlord rescinded the notice of termination based on a promise from the Tenants to improve their behaviour. The Representative submitted an email exchange between the Landlord and Tenant, dated July 3, 2021, in which B.B. apologized for her behaviour and promised that she would not behave in a similar way again. The Landlord allowed the Tenants to stay if the following conditions were accepted:

1. *Could you remove your trailer in our parking lot due to the many complaints we received and parking fairness?*
2. *Could you stop using our building outside outlet for electricity or tap for water because they are not used for all tenants but only for any maintenance and repair of the apartment building?*
3. *Could you stop using BBQ with flaming fuels or any flaming objects on our property or close to the building due to town regulations?*
4. *Could you stop parking your camper on our property under any circumstances?*
5. *Could your stop putting your personal belongings in the building's public area, which could stumble other tenants, especially for children in our building?*

[9] Additionally, the Landlord advised in the email that any verbal or physical abuse to staff is completely unacceptable.

[10] The Representative testified that on one occasion, propane could be smelled in the building, causing her to call 911 and have the building evacuated. The Representative testified that B.B. refused to evacuate, then exited and had a loud and aggressive argument with another tenant. The Representative testified that the fire department attended and discovered that the Tenants improperly stored a propane tank in the Residential Property. The Representative submitted correspondence from the fire chief stating that two empty propane tanks were found on the Tenants' deck, contrary to the *Fire Prevention Act*, RSPEI 1988, c F-11.

Tenants' Evidence and Submissions

[11] The Tenants submitted that their eviction notice was unjustly motivated and demonstrative of unequal treatment compared with other tenants.

[12] B.B. testified that the Representative was retaliating against the Tenants for causing her to lose a paid role at the building. B.B. testified that a lawnmower was stored in a nearby storage area causing fumes to enter the Residential Property. B.B. testified that she complained to the Representative about the fumes, without the issue being resolved. B.B. then went to the Landlord which resulted in the lawnmower being removed. B.B. testified that this also led to the Representative losing her paid grass-cutting and blue-bag sorting roles, making the Representative unhappy with the Tenants.

[13] The Tenants submitted that their propane tanks were not the cause of the smell that led to the building's evacuation. The Tenants further submitted that they did not feel that empty propane tanks were a risk. The Tenants submitted that nothing in the lease said propane tanks were not allowed in the units. B.B. further testified that a sign was posted on a building bulletin board stating that propane tanks and similar items are prohibited from the building only after the eviction notice was received.

- [14] B.B. testified that she has been treated unequally compared with other Tenants. B.B. testified that other Tenants are disruptive and cause nuisances. B.B. testified that she has complained of smells coming from another tenant's unit without action being taken. B.B. testified that one tenant allows her children to loudly ride scooters in the hallways without being reprimanded. B.B. testified that the Representative tolerates other tenants parking improperly. B.B. testified that other tenants smoke just outside the property which can be smelled in the Residential Property.
- [15] The Tenants further submitted that the Notice should be invalidated as they have not received formal written warning prior to eviction.

Analysis

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

- (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.*

- [17] Tenants are entitled to quiet enjoyment as a statutory condition of all tenancy agreements, as listed in section 22 of the Standard Form of Tenancy Agreement, which states:

Tenant's right to quiet enjoyment

A tenant is entitled to quiet enjoyment of the rental unit including, but not limited to, the right to

- (a) *reasonable privacy;*
- (b) *freedom from unreasonable disturbance;*
- (c) *exclusive possession of the rental unit, subject only to the landlord's right to enter the rental unit in accordance with section 23; and*
- (d) *use of common areas for reasonable and lawful purposes, free from significant interference.*

- [18] 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.
- [19] The Officer finds that based on the totality of the evidence, the Tenants have significantly and unreasonably disturbed others, contrary to subsection 61.(1)(d) of the Act, and that the Tenants violated the material term of quiet enjoyment, contrary to statutory condition 22 of the Standard Form of Tenancy Agreement.
- [20] The Officer notes that in 2021 the Landlord gave the Tenants a prior notice of termination for behaviour issues which was rescinded after B.B. apologized for her behaviour, promised not to repeat it, and to abide by the Landlord's listed conditions.

[21] The Officer notes the Representative's testimony of receiving numerous complaints from tenants regarding B.B.'s behaviour since the rescission of the prior notice of termination. The Officer notes the letters submitted by other tenants describing the harassment they experienced from B.B., as well as the statement of the appliance company regarding B.B.'s abusive behaviour during a service call.

[22] The Officer finds based on the evidence that the Notice is valid and the Application is allowed.

Conclusion

[23] The Notice is valid and the Application is denied.

[24] The tenancy agreement between the parties shall terminate effective 12:00 p.m. (noon) on August 4, 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 12:00 p.m. (noon) on August 4, 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 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.