

Introduction

- [1] On July 10, 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 a Landlord Notice of Termination pursuant to subsection 61.(5) of the Act.
- [2] Attached to the Application was a Landlord Notice of Termination (Form 4A) dated July 8, 2023, effective August 8, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons

You or persons admitted to the premises by you have conducted yourself/themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of other lessees; and

An act or omission on your part or on the part of a person permitted in or on the residential premises/property by you has seriously impaired the safety or lawful right or interest of me or other lessees in the residential property.

- [3] On July 8, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's door. On July 10, 2023, the Tenant served the Application on the Landlord by email.
- [4] On July 28, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a witness for the Tenant, and the Landlord participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [5] The Tenant and the Landlord entered into a written month-to-month tenancy agreement, commencing in April of 2019. The Residential Property is a rental unit situated in a 15-unit apartment building. Rent is \$875.00 per month due on the first day of the month. A security deposit of \$425.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord submitted that the Tenant has disrupted the quiet enjoyment of other tenants, largely by excessive noise, and damaged the building by breaking windows.
- [7] The Landlord submitted that windows of the building were broken on three separate occasions in July, and that the Tenant was responsible. The Landlord submitted emails from L.M. reporting multiple broken windows on July 2, July 8, and an undated later day. The Landlord testified that police responded and questioned the Tenant, however no charges were laid. The Landlord testified that the police ruled him out because he was working, however there was a period of time when the Tenant still would have been home. The Landlord testified that there was no object found in the rooms with the broken windows, and the window directly below the Tenant's window with an air conditioning unit was unbroken. The Landlord submitted that the Tenant leaned out of his above windows and used a long object to reach and break L.M.'s windows. However, the Landlord also testified that he is not certain that the Tenant broke the windows, and it could have been someone else.

- [8] The Landlord submitted numerous emailed complaints, message screenshots, and a signed written statement from L.M. The complaints allege that the Tenant repeatedly played music at a very high volume through all hours of the day and night, including when the Tenant was home. The most recent complaint regarding music is from April 21, 2022. The Landlord testified that the Tenant was provided a "warning eviction notice" on August 10, 2021 due to the noise. The Landlord also submitted notes exchanged between L.M. and the Tenant discussing the playing of music. The Landlord testified that he has never heard the Tenant playing music from the Residential Property and there have been no complaints about the Tenant's noise level apart from L.M.
- [9] The Landlord submitted two complaints from L.M. regarding the Tenant's use of a fire pit in the yard dated April 28, 2022, and May 9, 2022. The complaints stated that the Tenant used gasoline on the fire, the apartment smelled like smoke, and a log was left smoking in the fire pit the next morning. The Landlord testified that he did not speak with the Tenant or take other action following the complaints. The Landlord testified that he did not construct the fire pit. The Landlord testified that he has tolerated various tenants using it, although he should not have.

Tenant's Evidence and Submissions

- [10] The Tenant testified that he did not break the windows of the building and has not caused an unreasonable disturbance to other tenants. The Tenant testified that the eviction is based on L.M.'s personal dislike for the Tenant. The Tenant testified that he and L.M. have had disagreements, leading to the Tenant calling the police on L.M.
- [11] The Tenant testified that he has no knowledge of the broken windows at the building. The Tenant testified that he was questioned by police and was ruled out as a suspect because he was at work at the time. The Tenant testified that no charges have been laid.
- [12] The Tenant testified that he received a warning to stop playing music loudly on August 10, 2021. The Tenant testified that he abided this warning and has played music and podcasts quieter since then. The Tenant submitted videos of audio being played inside and outside his apartment, along with decibel readings. The Tenant testified that these show that the volume at which he plays his music and podcasts is quiet and reasonable. The Tenant also accused L.M. of noise disturbances early in the morning.
- [13] The Tenant testified that it was the Landlord himself who set up the fire pit. The Tenant testified that the Landlord has allowed numerous tenants to use it. The Tenant testified that he was never previously made aware of any issue concerning his use of the fire pit.

Preliminary Matter

- [14] The Officer notes that the Landlord served the Tenant with the previous Form 4 Notice applicable under the *Rental of Residential Property Act*, rather than the new Form 4A Eviction Notice applicable under the new *Act*. Is the Form 4 Notice used in the eviction process valid?
- [15] The Officer notes the application of section 30 of the *Interpretation Act*, RSPEI 1988, c I-8 ("*Interpretation Act*") which states:

Effect of deviation from specified form

Where an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if

- (a) the deviations do not affect the substance;*
- (b) the deviations are not likely to mislead; and*

(c) *the form used is organized in the same way or substantially the same way as the form the use of which is required.*

[16] The Officer notes that the relevant section on the current Form 4A is clause (d), which states:

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

[17] Clause (d) of the current Form 4A is pursuant to subsection 61.(1)(d) of the Act, which states:

Landlord's notice for cause

(1) *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;*

[18] The Officer finds that while the Landlord did not use the current notice, the application of the *Interpretation Act* allows the Notice to be proceed under clause (d) of the current Form 4A. The Officer finds that the Tenant was not prejudiced by the use of the previous notice. The Officer finds that the Tenant was aware of the reason for the Notice of termination and was given the opportunity to make full answer and defence.

Analysis

[19] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsection 61.(1)(d) of the Act, stated above.

[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 finds that the Landlord has not provided sufficient evidence to establish that the Tenant has unreasonably disturbed or endangered other tenants so as to warrant an eviction.

[22] The Officer finds that the Landlord has failed to establish that the Tenant broke the windows of the building. The Officer notes that police investigated the report, questioned the Tenant, and laid no charges on the Tenant. The Tenant further notes the Landlord's testimony, wherein he stated that he is not certain that the Tenant broke the windows.

[23] The Officer finds that the Landlord has failed to establish that the Tenant unreasonably disturbed other tenants by playing music. The Officer notes that the Tenant's testimony that he lowered the volume on his devices after receiving a warning notice in 2021. The Officer notes the Landlord's testimony that no tenant apart from L.M. has made any noise complaint concerning the Tenant. The Officer further notes that the most recent complaint from L.M. regarding music volume submitted into evidence is from April 21, 2022.

- [24] The Officer finds that the Landlord has failed to establish that the Tenant unreasonably disturbed other tenants by using a fire pit. The Landlord submitted complaints from L.M. regarding the Tenant's use of the fire pit from April and May of 2022. The Landlord was aware of the complaint from L.M. regarding the Tenant's use of the fire pit and did not make any warning or take any action. The Officer finds that the Landlord has tolerated use of the fire pit by a number of tenants.
- [25] Based on the totality of the evidence the Officer finds that the Notice is invalid and the Application is allowed. The tenancy agreement shall continue in full force and effect.

Conclusion

- [26] The Notice of Termination is invalid and the Application is allowed.
- [27] The tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 3rd day of August, 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.