

Introduction

- [1] On July 7, 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 4) dated June 30, 2023, effective August 1, 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.

- [3] On June 30, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's door. On July 8, 2023, the Tenant served the Application on the Landlord by hand delivery.
- [4] On August 4, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). 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 verbal month-to-month tenancy agreement on May 1, 2023. The Residential Property is a rental unit situated in a 5-unit apartment building. Rent is \$625.00 per month due on the first day of the month. A security deposit of \$300.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord testified that the Tenant has allowed numerous visitors who have been disruptive, intimidating, and frightening to other tenants. The Landlord testified that tenants are often awoken by people coming and going through the Residential Property at all hours. The Landlord testified that the Tenant has regularly had 4-6 individuals stay in her bachelor apartment unit overnight. The Landlord testified that the individuals are loud, leave garbage and needles strewn about the property, and have been seen carrying weapons. The Landlord testified that police have attended the Residential Property numerous times since the Tenant moved in, due to the individuals allowed on the property. The Landlord testified that tenants are fearful to leave their units when these individuals are around.
- [7] The Landlord testified that he has received over 75 complaints from other tenants through conversations, text messages, and other means. The Landlord submitted four written complaint letters from other tenants describing feeling unsafe due to the people brought onto the property. One complaint letter alleged hearing death threats. Another complaint letter stated that individuals entered their home without permission. The Landlord testified that one tenant no longer puts clothes on her clothesline as towels have been stolen several times. Another complaint letter discussed seeing an individual brandishing a hatchet. The Landlord further testified to seeing individuals carrying baseball bats.

- [8] The Landlord testified that many of the individuals are intravenous drug users who leave uncapped needles in various locations around the property. The Landlord testified that he never picked up needles before the Tenant moved in, but has since had to do it on a regular basis. The Landlord testified that there are children in the building and he fears they may come in contact with the needles.
- [9] The Landlord testified that the Tenant was an acquaintance of the previous occupant of the Residential Property. The Landlord testified that some individuals came to the Residential Property looking for the previous occupant after the Tenant moved in. The Landlord testified that the individuals who now attend are there for the Tenant. The Landlord testified that when he has asked individuals who they came to see, they say they came to see the Tenant.
- [10] The Landlord testified that the Tenant kept a mattress in a common area of the building. The Landlord testified that he has found individuals sleeping on and around the mattress. The Landlord submitted photographic evidence of this.
- [11] The Landlord testified that around July 31, 2023 the backdoor to the Residential Property was twice kicked in and damaged. The Landlord further testified that the Tenant was arrested on July 31, 2023 for unrelated reasons.
- [12] The Landlord testified to giving numerous verbal warnings to the Tenant regarding the need to stop people from coming there, without success. The Landlord testified that following conversations the situation at the Residential Property would sometimes improve for a week, but soon after the same problems would reoccur at the same level as before.

Tenant's Evidence and Submissions

- [13] The Tenant testified that most people who come to the Residential Property are looking for the previous occupant. The Tenant testified that she does not want these people to come to the Residential Property either. The Tenant testified that she has tried hard to accommodate the Landlord and other tenants by not having guests.
- [14] The Tenant testified that a number of times the police arrived at the Residential Property was because she called them to have individuals removed. The Tenant further testified that individuals have attempted to pick her lock, leading her to have a different lock installed.
- [15] The Tenant testified that her arrest on July 31, 2023 was not for anything related to disruption at the Residential Property. The Tenant testified that she was not home when individuals kicked in her back door on that day. The Tenant further testified that someone recently stole from her at the Residential Property.

Preliminary Matter

- [16] 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?
- [17] 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.*

[18] 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

[19] 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;*

[20] 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

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

[22] 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.

[23] The Officer finds that the issues raised by the Landlord are very serious in nature. Based on the totality of the evidence, the Officer finds that the Tenant and individuals allowed on the Residential Property by the Tenant have significantly and unreasonably disturbed others, contrary to subsection 61.(1)(d) of the Act.

[24] The Officer notes the Landlord's testimony of receiving numerous tenant complaints, the submission of four tenant complaint letters, and the Landlord's testimony of individuals on the property stating they attend the Residential Property to see the Tenant.

[25] The Officer further notes that the Landlord provided verbal warnings to the Tenant regarding the problems caused by the individuals attending the Residential Property.

[26] The Officer finds that the Notice is valid and the Application is denied.

Conclusion

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

[28] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on August 10, 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 August 10, 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 4th 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 **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.