

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 4) dated July 7, 2023, effective July 31, 2023, (the "Notice"). 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;

You or someone you have allowed on the property has caused damage to the rental unit;
and

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

- [3] On July 7, 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 August 10, 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 written one-year fixed-term tenancy agreement on December 1, 2022. The Residential Property is a rented condominium. Rent is \$1,800.00 per month due on the first day of the month. A security deposit of \$1,800.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord testified that the Tenant has been late paying rent five times. The Landlord submitted email correspondence between himself and the Tenant on the subject of late payments. The Landlord additionally submitted banking records showing late payments. The records show the last late payment was made in June of 2023.
- [7] The Landlord testified that the Tenant installed a Wi-Fi antenna contrary to the terms of the tenancy agreement. The Landlord testified that he told the Tenant to remove it in May of 2023. The Landlord testified that he believes it was removed on August 9, 2023.
- [8] The Landlord testified that the Tenant's Wi-Fi antenna had been installed directly into a wooden beam on the rental unit's balcony deck. The Landlord testified that the installation damaged the Residential Property by harming the structural integrity of the beam and making it more likely to rot. The Landlord also testified that the Tenant's children damaged the building by writing on the walls. The Landlord testified that there is no longer any writing on the walls.

- [9] The Landlord testified that the Tenant has disturbed other tenants by unreasonable levels of noise. The Landlord submitted a letter from another person stating that he had received complaints regarding the Tenant yelling and using foul language. The Landlord submitted another letter from two other condominium owners saying that they had received noise complaints about the Tenant. The Landlord further submitted that the Tenant disturbed tenants surrounding an incident involving a dog on the property. The Landlord testified that the Tenant allowed someone with a dog on the property that was uncontrollable and barking wildly. The Landlord submitted a video of a woman with a barking and leaping dog on the property. The Landlord testified that dogs must have permission to be on the property, and none are permitted which are over forty pounds. The Landlord testified that he believed the dog to weigh more than forty pounds. The Landlord testified that he does not know how long the dog was on the property.
- [10] The Landlord submitted email records of correspondence between himself and the Tenant discussing noise complaints. An email dated July 6, 2023 from the Landlord warned the Tenant that if she did not follow the rules he would enforce the rules pursuant to the bylaws and the tenancy agreement. The Landlord testified that at the time of sending this warning he was already preparing the Notice of termination, which he served the next day.
- [11] The Landlord testified that the Tenant had the tenant's insurance policy cancelled, contrary to the terms of the tenancy agreement. The Landlord submitted a notice he received from the insurance company stating that the policy was cancelled effective April 1, 2023. The Landlord testified that he believed the policy was reactivated at a later time.

Tenant's Evidence and Submissions

- [12] The Tenant testified that her late rent payments were due to her partner leaving the home, confusion over housing assistance payments, and wages being paid in arrears for her new full-time job. The Tenant acknowledged previous late payments, but testified that she communicated them to the Landlord, made partial payments where she could not make complete payments, and paid the rest as soon as she could. The Tenant testified that she secured full-time employment in late May. The Tenant testified that she was paid in arrears for her first paycheck, causing her to pay rent late for June, but for July and August she has paid on time.
- [13] The Tenant denied the reasonableness of the noise complaints. The Tenant testified to having been loud in the rental unit only on a few occasions. The Tenant testified that the noise complaints were likely meant to be about a different unit. The Tenant submitted a note from her employer stating that the Tenant and her children were at her place of employment at the time of the noise complaints, so the noise complaints could not have been caused by them. The Tenant testified that a family member brought a dog onto the Residential Property. The Tenant testified that the dog only stayed there on one day for around twenty minutes before it was removed. The Tenant further testified that she does not believe the dog weighs more than forty pounds.
- [14] The Tenant testified that she did not know at the time that the Wi-Fi antenna was contrary to the tenancy agreement. The Tenant testified that the company it belongs to is based in Nova Scotia, which made it very difficult to arrange to have it removed. The Tenant testified that she made numerous efforts to arrange for its removal before it was eventually removed on August 9, 2023.
- [15] The Tenant denied causing any damage to the Residential Property and submitted photos of the unit's condition. The Tenant denied that her children wrote on any walls of the building and highlighted that there was no photo evidence.
- [16] The Tenant further testified that the tenant's insurance policy for the Residential Property was cancelled when her partner left the home, but it has since been restored.

Analysis

- [17] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsections 61.(1)(b), (d), (f) and (h) of the Act, which state:

61. 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:*

- (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;*
- (f) *the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property;*
- (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.*

- [18] The Officer notes that in 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 the Landlord has failed to establish that an eviction is warranted for late payment of rent. The Officer notes that while the Tenant has repeatedly made late rental payments, the Landlord sought an eviction in a month where the Tenant paid rent on time. The Officer further notes that there is no indication that rent was late for July or August, and no rent remains owing. The Officer notes that the Tenant must continue to pay rent on time and that the Landlord has indicated that he will not tolerate any further late payments.

- [20] The Officer finds that based on the totality of the evidence, the Landlord has failed to establish that the Tenant, or persons admitted onto the Residential Property by the Tenant, unreasonably disturbed other tenants so as to warrant an eviction. The Officer notes the lack of direct evidence concerning noise or behavioural issues. The Officer further notes the emailed written warning provided to the Tenant by the Landlord on July 6, 2023, followed by service of the Notice the following day, without any further infraction having occurred between that time. Regarding the presence of the Tenant's sister's dog, the Officer notes the uncontested testimony of the Tenant that the dog was only at the Residential Property for approximately twenty minutes. The Officer reminds the Tenant that the Landlord has indicated that he will not tolerate unreasonable disturbances and the presence of pets without permission.

- [21] The Officer finds that the Landlord has failed to establish that eviction is warranted for failure to comply with a material term that had not been corrected within a reasonable time after receiving written warning. The Officer finds that a number of material terms of the tenancy agreement were violated, but were remedied by the Tenant. The Officer notes that the required tenant's insurance policy had been cancelled, but was later restored. The Officer notes that a barking dog was permitted on the Residential Property, although it was removed after approximately twenty minutes. The Officer notes that a Wi-Fi antenna was installed on the balcony without permission, although this was removed on August 9, 2023.
- [22] The Officer further finds that the Landlord has failed to provide sufficient evidence to establish that the Tenant caused unreasonable damage to the Residential Property through installation of the internet antenna, or by any writing on walls.
- [23] 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

- [24] The Notice of Termination is invalid and the Application is allowed.
- [25] 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 11th 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.