

Introduction

[1] On July 18, 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 18, 2023, effective August 1, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons

You have permitted an unreasonable number of occupants in the rental unit;

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

You or someone you have allowed on the property have engaged in illegal activity on the property;

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

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

There is an order requiring the rental unit to be vacated; and

Our employment relationship has ended.

[3] The Officer notes that T.Z. testified that the last two reasons for eviction were selected in error and were not being relied upon.

[4] The Officer notes that on June 30, 2023, the Landlord additionally served the Tenant with a Form 4 notice of termination applicable under the *Rental of Residential Property Act*, RSPEI 1988, c R-13.1. The Landlord is solely relying upon the Form 4A Notice served on July 18, 2023.

[5] On July 18, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's door. On July 18, 2023, the Tenant served the Application on the Landlord by email.

[6] On August 10, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A representative for the Landlord ("T.Z."), a witness for the Landlord ("M.P."), and a representative for the Tenant ("L.W.") participated. The Tenant did not participate.

Issue to be Decided

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

Summary of the Evidence

[7] The Landlord and the Tenant entered a written verbal month-to-month tenancy agreement in November of 2019. The Residential Property is a unit in an apartment building. Rent is \$795.00 per month, due on the first of each month. A security deposit of \$795.00 was required and paid.

Landlord's Evidence and Submissions

- [8] The Representative testified that he has received at least 25 complaints regarding severe disturbances caused by individuals allowed in the Residential Property by the Tenant. The Representative testified that over the past two and a half years there have been constant issues involving the Tenant. The Representative testified that he has received reports of yelling, fighting, and open drug use from individuals permitted into the building by the Tenant. The Representative testified that another representative of the Landlord gave verbal warnings to the Tenant over the phone three times prior to serving the first eviction notice.
- [9] The Representative testified that police came to the building numerous times due to the conduct of the Tenant. The Representative submitted a Summerside Police record, showing that police attended the property five times between July 2022 and July 2023. The record did not specify which unit was the reason for attending.
- [10] M.P. testified that he attended the Tenant's unit between 15 and 20 times on various service calls. M.P. testified that on numerous occasions he witnessed individuals in the Tenant's unit causing disturbances, making unreasonable levels of noise, fighting, and using drugs. M.P. testified finding needles strewn throughout the unit and outside of it. M.P. testified to finding numerous needles in sink drains and flushed down toilets. M.P. testified that he had to replace several drain parts due to damage and lodged needles. M.P. testified that the Tenant's unit often has up to nine people staying in it and that the unit is kept in an unsanitary state.
- [11] The Representative testified that he served a Form 4 notice of termination under the *Rental of Residential Property Act*, RSPEI 1988, c R-13.1 on June 30, 2023, then served a Form 4A Notice of termination on July 18, 2023 under the new *Act*. The Representative testified that he served the second Notice when he became aware there were updated forms under the new *Act*.
- [12] The Landlord served the original notice of termination on June 30, 2023. This was followed by correspondence to the Tenant on July 14, 2023, stating that the Tenant and her guests had been engaged in a fight which involved the use of mace, and that this was the Tenant's "final warning". The Landlord served the second Notice of termination on July 18, 2023. This was followed by a written warning on July 22, 2023 that described complaints regarding the Tenant, and advised that this was the Tenant's "second warning".
- [13] T.Z. testified that the warning letters were never intended to remove the effect of the notices of termination, which had been already served. T.Z. said that the warning letters were delivered with the intention to address new disruptive behaviour which continued after the notices of termination had already been served.

Tenant's Evidence and Submissions

- [14] The Tenant submitted that she is not responsible for people who come into the building and cause issues. The Tenant submitted that this problem was exacerbated by the unsecured lock on the main door. The Tenant submitted that many of the disturbances were caused by the neighbour below her, who has since left. The Tenant acknowledged that there was a significant domestic disturbance two years ago, which was dealt with at the time. The Tenant submitted that the police often visit the building, but not just for her unit.
- [15] The Tenant further submitted that the Landlord failed to fix numerous issues with the Residential Property. The Tenant submitted into evidence various photos depicting issues with the unit.
- [16] L.W. submitted that the Landlord's evidence regarding Summerside Police reports concerning the property are irrelevant as they do not state which unit of the apartment the call was based upon.

- [17] L.W. testified that she and the Tenant had negative interactions with M.P. previously. L.W. testified that she does not believe that the testimony of M.P. is truthful in his testimony. L.W. testified that on the occasions when she visited the Residential Property, she did not see disturbances caused by guests of the Tenant.
- [18] L.W. testified that the Tenant did not receive the letters directed to the Tenant dated July 14, 2023 and July 22, 2023.

Analysis

- [19] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsections 61.(1)(c), (d), (e), (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:

- (c) there is an unreasonable number of occupants in the tenant's rental unit;*
- (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;**
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,*
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant;**
- (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.**

- [20] The Landlord testified that under sub-subsection 61.(1)(h) of the Act, the Tenant breached the material terms of quiet enjoyment and failure to repair damage. The Officer notes section 22 and subsection 28.(4) of the statutory conditions of the Standard Form Tenancy Agreement, which state:

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.*

Tenant responsible for undue damage

- (4) *A tenant of a rental unit shall repair, in a good and professional manner, undue damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

[21] 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.

[22] The Officer finds that based on the totality of the evidence the Tenant and individuals allowed onto the Residential Property by the Tenant have unreasonably disturbed other tenants, contrary to sub-subsection 61.(1)(d) of the *Act*, and contrary to the material term of quiet enjoyment under sub-subsection 61.(1)(h) of the *Act*. The Officer notes the direct testimony of M.P. describing numerous severe disturbances occurring inside the Tenant's unit. The Officer further notes T.Z.'s testimony of receiving at least 25 complaints from other tenants regarding disturbances from the Tenant's unit. The Officer finds that these breaches of the *Act* are sufficient for the Landlord to terminate the tenancy agreement.

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

Conclusion

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

[25] The tenancy agreement between the parties shall terminate effective 12:00 p.m. (noon) on August 21, 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 21, 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 15th 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.