

Introduction

- [1] On July 17, 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 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 10, 2023, effective August 10, 2023, (the "Notice"). The Notice was served on the Tenants for the following reasons, pursuant to sub-subsection 14.(1)(a) of the *Rental of Residential Property Act*, RSPEI 1988, c R-13.1 ("*Rental of Residential Property Act*"): *You have failed to fulfill your responsibility for ordinary cleanliness of the interior of the residential premises or for damage caused by you or persons you permitted on the premises*
- [3] On July 10, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's door. On June 17, 2023, the Tenant served the Application on the Landlord by email.
- [4] On August 14, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both Tenants ("J.R." and "R.R.") and two representatives for the Landlord ("M.C." and "T.C.") participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [5] The Landlord and the Tenant entered a written one-year fixed-term tenancy agreement in November of 2017. The tenancy agreement has since converted to a month-to-month agreement. The Residential Property is an apartment in a 12-unit apartment building. Rent is \$772.65 per month, due on the first of each month. A security deposit of \$350.00 was required and paid.

Landlord's Evidence and Submissions

- [6] M.C. testified that she received reports from other tenants that the Tenants were using black garbage bags, and putting them into other tenants' outdoor trash bins, both contrary to the building's waste disposal rules. M.C. testified that the Landlord gave multiple notices building-wide about the need to properly sort garbage and use the proper bags in the prior year.
- [7] M.C. testified that she had surveillance camera footage video recordings showing the Tenants putting black garbage bags into the trash bins, but the video was damaged and can no longer be viewed.

Tenant's Evidence and Submissions

- [8] J.R. testified that the Tenants did not understand the Notice and presumed it was a mistake as he and R.R. have never used black garbage bags while occupying the Residential Property. J.R. testified that upon receipt of the Notice he made multiple attempts to contact the Landlord, however the building manager texted him and said that the Landlord was in China and that the Tenants should not call her. The Tenants submitted screenshots of emails and text messages of their attempts to contact the Landlord and address the Notice.

- [9] J.R. testified that he spoke to the building manager who told him that R.R.'s husband was throwing black garbage bags in the trash bins. J.R. testified that the building manager would not listen when they attempted to explain that R.R. lives with her son and is not married. J.R. testified that the building manager told the Tenants that she had surveillance camera footage of them putting black garbage bags in the trash, however she refused to show them the footage.
- [10] J.R. testified that garbage is indeed an issue at the building, however the Tenants are not causing it. The Tenants submitted photos of black garbage bags left on the property by others. The Tenants also submitted footage of an unknown man walking with black garbage bags and putting them in a trash bin. J.R. testified that they are one of only two units that have a unit-assigned garbage bin, which they always put their garbage inside.
- [11] J.R. testified that he and R.R. never received any direct warning about improper sorting of garbage. J.R. testified that there have been notices from the Landlord about the need to properly sort trash, but they were posted in the front of the building and addressed to all the tenants, not J.R. and R.R.

Preliminary Matter

- [12] The Officer notes that the Landlord served the Tenants 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?
- [13] 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.*

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

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

- [15] Clause (i) of the current Form 4A is pursuant to sub-subsection 61.(1)(h) 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:

- (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*

- [16] Tenants are responsible for ordinary cleanliness of units, pursuant to section 28.(3) of the statutory conditions of the Standard Form Tenancy Agreement, which states:

Tenant responsible for ordinary cleanliness

(3) *A tenant is responsible for*

- (a) *ordinary cleanliness of the rental unit and all areas of the residential property used exclusively by the tenant, except to the extent that the tenancy agreement expressly requires the landlord to clean it; and*
- (b) *proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.*

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

Analysis

- [18] The Landlord's reasons for terminating the tenancy agreement is pursuant to sub-subsection 61.(1)(h) of the *Act*, stated above.
- [19] 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.
- [20] The Officer finds that the Landlord has failed to establish that the Tenants failed to comply with a material term of the tenancy agreement. The Officer notes the lack of direct evidence supporting the allegation that the Tenants used black garbage bags. The Officer notes the testimony of the Tenants that they did not use black garbage bags and that they have never used them at the Residential Property.
- [21] The Officer finds that the Notice of Termination is invalid and the Application is allowed.

Conclusion

- [22] The Notice of Termination is invalid and the Application is allowed.
- [23] 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 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 **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.