

Introduction

- [1] On July 13, 2023, the Tenants filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking:

To dispute a termination notice; and

Other: Return of Rent in the amount of \$300.00.

- [2] Attached to the Application was an Eviction Notice (Form 4A) dated July 10, 2023, effective August 31, 2023, (the "Notice"). The Notice was served on the Tenants via email on July 10, 2023. The Notice was served on the Tenants for the following reason:

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

- [3] On August 14, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants and Landlords participated.

Issues to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?
- ii. Are the Tenants entitled to a return of rent?

Summary of the Evidence

- [4] In February of 2023, the Tenants and the Landlords entered into a written, fixed-term rental agreement for the Residential Property. The Residential Property is situated in a single-family house. Rent is \$1,500.00 per month due on the first day of the month. A security deposit of \$500.00 was paid.

Landlords' Evidence and Submissions

- [5] E.P. stated on May 9, 2023, M.G. sent him a message asking if the Landlords wanted the Tenants to remove some of the knotweed that was growing on the property. E.P. stated he agreed to split the cost of the removal of the weeds and re-seeding the area. He stated although he agreed to split the cost no amount was actually agreed to and the Tenants have not provided a proper breakdown of the costs.
- [6] On June 13, 2023, E.P. attended the property and observed that the Tenants had removed a large portion of the bank between his property and his neighbour's property. E.P. stated that he was concerned that water would now be able run down from the neighbour's property and would wash his bank away. On June 14, 2023, E.P. messaged the Tenants and asked them to stop doing work on the property.
- [7] E.P. stated the Tenants widened the driveway and he did not give them permission to do so. The Tenants cut into the neighbours property by two feet and exposed the neighbours fence post. E.P. stated he will now have to build a retaining wall to keep the bank from falling in. He also stated the Tenants dumped the knotweed at the back of his property and it requires a special type of disposal to get rid of.

Tenants' Evidence and Submissions

- [8] M.G. stated the only part of the driveway which was widened was where he removed a tree stump, which E.P. had asked him to do. When the Tenants starting clearing the knotweed the neighbour's fencepost was exposed as a result of the requested work. M.G. denied cutting more of the bank than what was required to remove the weeds and deadfall. M.G. submitted before and after photos of the work done to the property into evidence. He stated the weeds have returned because the Landlord would not pay him to spray the soil.
- [9] M.G. stated the Tenants also put down gravel for drainage after taking away the weeds and there is no evidence there will be water washing away the bank. M.G. stated the Landlords owe him \$375.00 as he did not include the cost of a trailer rental but he would be satisfied with \$300.00. M.G. stated the cleared weeds are still on the property as E.G. has not paid M.G. for his work and M.G. refuses to remove the weeds until he is paid.
- [10] C.W. stated she was present each time that E.P. spoke to M.G. on the phone. She said the phone was always on speaker phone and she can confirm what M.G. stated was what was discussed between M.G. and E.P.

Analysis

- [11] The Landlords' reason for terminating the tenancy agreement is pursuant to sub-subsection 61.(1)(f) of the *Act*, which states:
- 61.(1) A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*
- (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.*
- [12] The Officer notes that in such matters where there is a dispute over a Notice of Termination by a Landlord, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice.
- [13] The Officer notes that both parties had conflicting testimony as to the extent of the work that was agreed to by the parties. M.G. stated he carried out the work as agreed to by the parties and that the driveway was wider because he removed a tree stump at the request of E.P. E.P. stated M.G. cut too far into the bank, which damaged the Residential Property, and a retaining wall would need to be built. E.P. stated he did not agree to the Tenants widening the driveway. There was no evidence presented showing that the Tenants continued to work on the property after they were asked to stop by the Landlords.
- [14] The Officer finds that in this case, based on the evidence submitted and the testimony of the parties, that the Landlords have not proven, on a balance of probabilities, that the Tenants have breached subsection 61.(1)(f) of the *Act* by causing unreasonable damage to the Residential Property.
- [15] Furthermore, the Officer finds that the \$300.00 the Tenants are requesting for a return of rent is based on an agreement made by the parties which is outside of the tenancy agreement and not within the jurisdiction of the Rental Office. Therefore, the request for a return of rent is denied.

Conclusion

[16] The Notice is invalid and the Application is allowed in part.

[17] The Tenancy Agreement between the parties shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

A. The Tenancy Agreement between the parties shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 17th day of August, 2023.

(sgd.) Mitchell King

Mitchell King
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.