

Introduction

[1] On July 18, 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 12, 2023, effective August 30, 2023, (the "Notice"). The Notice was served on the Tenants for the following reasons

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

You have not repaired damage to the rental unit;

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

You have knowingly given false information about the rental unit;

Our employment relationship has ended.

[3] The Landlord testified at the hearing that she would not be relying upon "our employment relationship has ended" as a reason for eviction.

[4] On July 12, 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 mail.

[5] On August 17, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both Tenants ("C.Y." and "A.L."), the Landlord, and a witness for the Landlord ("C.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

[6] On May 1, 2021, the Landlord and the Tenants entered a written month-to-month tenancy agreement. The tenancy agreement has since converted to a month-to-month agreement. The Residential Property is single detached house. Rent is \$862.60 per month, due on the first of each month. A security deposit of \$820.00 was required and paid.

Landlord's Evidence and Submissions

[7] The Landlord submitted that the Tenants were responsible for damaging the Residential Property, and failing to report or fix it.

[8] The Landlord testified that the Tenants failed to report a major water leak under the Residential Property. The Landlord testified that a neighbour reported the leak to her on July 11, 2023. The Landlord submitted that it was unreasonable for the Tenants to not have seen and reported the leak. The Landlord submitted photographs of a stream of water leading away from the Residential Property. C.C. testified that he inspected the leak on July 11, 2023 and July 12, 2023 and concluded that the leak likely existed for several months. The Landlord testified that the Residential Property will need new insulation and skirting due to damage caused by the leak. The Landlord testified that she was not necessarily alleging that the Tenants caused the leak, but suggested that it was possible.

- [9] The Landlord testified that the Tenants caused water damage to a section of flooring in the Residential Property. The Landlord submitted photographs of a darkened section of flooring directly in front of the patio sliding doors. The Landlord submitted that this was water damage caused by the Tenants' dog urinating on that area. The Landlord testified that she determined it was urine when she kneeled in that area on one occasion to make repairs. C.C. testified that when he attended the Residential Property on July 11, 2023 and July 12, 2023 he noticed scratches on that area of flooring which he believed to be caused by the Tenants' dog.
- [10] The Landlord submitted that the Tenants damaged the shed in the backyard of the property, which was discovered on November 20, 2022. The Landlord submitted photographs of the shed with a large piece of the side wall missing. The Landlord further testified that two other walls had rotted and were heavily damaged. The Landlord submitted that the Tenants caused this by failing to maintain the grass around the shed, allowing moisture to build on the shed. The Landlord further submitted that the Tenants placed a table against the shed which caused damage. The Landlord submitted screenshots of text messages with C.Y. from June 28, 2023 reminding her to trim the grass around the shed.
- [11] The Landlord further submitted that the Tenants have been smoking within the Residential Property. The Landlord submitted that she detected a smell of smoke when in the Residential Property and that she saw ashtrays within it.

Tenant's Evidence and Submissions

- [12] The Tenants submitted that they did not cause the leak under the Residential Property. C.Y. testified that she did not know about the leak under the house until a few days before the Landlord became aware of it on July 11, 2023. C.Y. testified that her neighbour told her that he saw a leak under the house, however she put off telling the Landlord for a few days as she was ill with severe headaches.
- [13] The Tenants submitted that they did not cause the darkening of the area of flooring in front of the patio. C.Y. testified that she originally believed it was sun damage as it was directly in front of the patio windows. However, she then concluded that the damage was likely caused by the improperly fitted patio doors allowing water to seep inside. C.Y. testified that the doors do not properly fit, causing a draft from the door that often moves the curtains. C.Y. further testified that there is no eavestrough above the door to displace water.
- [14] C.Y. testified that her dog does not urinate indoors and did not cause the flooring damage. C.Y. further testified that the alleged dog scratches on the flooring are actually cracks in the varnish.
- [15] The Tenants submitted that they did nothing to cause the damage to the shed. The Tenants submitted that they had not been out by the shed for a month prior to the damage being discovered on November 20, 2022. C.Y. acknowledged a period of time earlier in 2023 that the grass was not cut, but argued that in no way did it cause damage to the shed. C.Y. further testified that the table against the shed had been in that position since before they moved into the Residential Property.
- [16] C.Y. testified that the Tenants never smoke indoors. C.Y. testified that the ashtrays are brought indoors to avoid littering. C.Y. further testified that she never received any prior warning about smoking on the Residential Property.

Analysis

- [17] The Landlord's reasons for terminating the tenancy agreement are pursuant to subsection 29.(2) and sub-subsections 61.(1)(f), (g), (h), and (j) of the *Act*, which state:

29. Notice by tenant

- (2) *A tenant of a rental unit shall provide notice as soon as practicable to the landlord or the contact person referred to in subsection (3) when emergency repairs are needed to the rental unit.*

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:*

- (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;*
- (g) *the tenant does not repair damage to the rental unit or residential property, as required under section 28.(4), within a reasonable time;*
- (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.*
- (j) *the tenant knowingly gives false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person.*

- [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 based on the totality of the evidence, the Landlord has failed to establish that an eviction is warranted. The Officer finds that the Landlord was unable to establish that the Tenants were responsible for unreasonable damage caused to the Residential Property. The Officer notes from the Landlord's testimony that she alleged it was only a possibility that it was the Tenants who caused the water leak under the Residential Property. The Officer further notes C.Y.'s testimony that the patio doors were improperly installed and lacked an above-head eavestrough, potentially leading to the flooring water damage.
- [20] The Officer reminds the Tenants that they must be diligent to report any issues that arise at the Residential Property immediately to the Landlord when they are discovered, pursuant to subsection 29.(2) of the Act.
- [21] The Officer finds that the Tenants failed to cut the grass around the shed for a period of time. However, the Officer finds that the Landlord has failed to establish based on the evidence that this was the cause of the damage to the shed.
- [22] The Officer further finds based on the totality of the evidence that the Landlord has failed to establish that the Tenants smoked within the Residential Property. The Officer further finds that the Tenants did not give false information about the Residential Property within the meaning of sub-subsection 61.(1)(j) of the Act.
- [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 22nd 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.