

Introduction

- [1] On July 17, 2023, the Occupants 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 request the landlord provide the tenancy agreement and/or other information required by the Act; and

To request a determination that my landlord contravened my right to quiet enjoyment, entered the rental unit unlawfully, prohibited and/or restricted access to the rental unit, changed the locks or failed to secure the rental unit, failed to repair or maintain the rental unit, or any other material term of the tenancy agreement.

- [2] On August 16, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). An Occupant and the Property Owners participated.

Issues to be Decided

- i. Is there a tenancy agreement between the parties?
- ii. If there is a tenancy agreement, do the Property Owners have to provide a copy of the tenancy agreement to the Occupants?
- iii. If there is a tenancy agreement, have the Property Owners failed to repair or maintain the Residential Property?

Summary of the Evidence

- [3] The Property Owners are the parents of one of the Occupants. In May of 2021 the parties entered into a verbal agreement allowing the Occupants to occupy the Residential Property, which is vacant land that used to have a house on it. The parties agreed that the Occupants would pay the back taxes owed on the Residential Property and then the Occupants would own the Residential Property.

Occupants' Evidence and Submissions

- [4] The Occupant stated the Occupants agreed to pay the back taxes and the taxes going forward on the Residential Property. She stated the agreement was that the Occupants would own the land after the back taxes had been paid. After the Occupants paid the back taxes as agreed to, the Occupants found out there was a lien on the property for \$49,000.00. The Occupant stated the Property Owners were not truthful and knew the Occupants would never be able to own the land because of the lien.
- [5] The Occupant stated she wants the Property Owners to enter into a rental agreement with the Occupants for "lot rent," as the Occupants have a camper on the property. The Occupant then wants the Property Owners to repair the water service at the Residential Property which will enable the sewer to work properly.

Property Owners' Evidence and Submissions

- [6] The Property Owners stated that there was a house on the Residential Property and it was repossessed by the bank several years ago. The house on the property burned down sometime after that. The Property Owners started getting a bill for back taxes which were owed on the property. The Occupant looked into the matter and told the Property Owners that the property had been put back into the Property Owners' name.
- [7] The Property Owners told the Occupants they could move onto the property if they paid the back taxes. When the taxes were paid the Occupants would then own the property. They told the Occupants that they were unsure if the sewer or water would work as they had not been used for 10-12 years.
- [8] The Property Owners stated there was never a landlord / tenant relationship between the parties. It was only an agreement to pay the back taxes on the property. They were not aware there was a lien on the property until they were recently notified by the Occupants.

Analysis

- [9] Sections 1.(h) and 1.(x) of the Act sets out the definitions of "landlord" and "tenant":

(h) "landlord", in relation to a rental unit, includes

(i) the owner of the rental unit, the owner's agent or another person who, on behalf of the owner,

*(A) permits occupation of the rental unit under a tenancy agreement, or
(B) exercises powers and performs duties under this Act or a tenancy agreement,*

(ii) the heirs, assigns, personal representatives and successors in title to the owner,

(iii) a person, other than a tenant occupying the rental unit, who

*(A) is entitled to possession of the rental unit, and
(B) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit, and*

(iv) a former landlord, as the context requires.

(x) "tenant" includes

(i) a person who is entitled to use or occupy a rental unit under a tenancy agreement,

(ii) the assigns and personal representative of a person referred to in subclause (i), and

(iii) when the context requires, a former or prospective tenant.

[10] Section 1.(w) of the *Act* sets out the definition of “*tenancy agreement*”:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and the provision of services and facilities.

[11] Based on the evidence and testimony provided by the parties, the Officer finds that the intent of the agreement the parties entered into in May of 2021 was not a “*tenancy agreement*” as defined by the *Act*. The Officer finds that this was an agreement between family members and not an agreement between a “*landlord*” and a “*tenant*”. As a result, the Officer does not have jurisdiction to determine this dispute.

Conclusion

[12] There is no tenancy agreement between the parties.

[13] The Rental Office does not have jurisdiction to determine this dispute.

IT IS THEREFORE ORDERED THAT

A. There is no tenancy agreement between the parties.

B. The Rental Office does not have jurisdiction to determine this dispute.

DATED at Charlottetown, Prince Edward Island, this 22nd 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.