

Introduction

- [1] On August 2, 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 an Eviction Notice pursuant to subsection 61.(5) of the *Act*. The Application is further requesting a determination that the Landlord contravened the Tenant's right to quiet enjoyment, pursuant to section 59. of the *Act*.
- [2] Attached to the Application was an Eviction Notice (Form 4A) dated July 31, 2023, effective August 31, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons:
- You or someone you have allowed on the property have disturbed or endangered others;*
- 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; and*
- You have failed to comply with a material term of the tenancy agreement;*
- [3] On July 31, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's door.
- [4] On August 28, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Landlord and Tenant participated in the hearing.

Issues to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?
- ii. Did the Landlord contravene the Tenant's right to quiet enjoyment?

Summary of the Evidence

- [5] The Landlord and the Tenant entered a written one-year fixed-term tenancy agreement on December 17, 2021. The tenancy agreement has since converted to a month-to-month agreement. The Residential Property is a unit in a three-unit building. Rent is \$1,200.00 per month, due on the first of each month. A security deposit of \$1,200.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord testified that after six to eight months from the start of the tenancy agreement the Tenant caused numerous issues which unreasonably damaged the Residential Property and severely disturbed other tenants.
- [7] The Landlord testified that the Tenant and others allowed onto the Residential Property by the Tenant have repeatedly made unreasonable levels of noise. The Landlord testified that he has received numerous complaints regarding yelling, fighting, and banging coming from the Tenant's rental unit. The Landlord submitted letters from other tenants describing severe disturbances from altercations in the Tenant's unit. The Landlord testified that an incident on or around the last weekend of July 2023 was particularly severe which involved fighting in the backyard of the Tenant's rental unit. The Landlord testified that police have attended on numerous occasions due to disturbances caused by the Tenant. The Landlord submitted a Summerside Police record showing two attendances at the Residential Property in July of 2023.

- [8] The Landlord further testified that the Tenant is keeping a cat in the rental unit, contrary to the tenancy agreement, and that this has led to a strong odour emanating from the rental unit and hallway. The Landlord submitted a letter from another tenant describing improperly stored cat litter and cat waste, along with other unsanitary conditions. The Landlord submitted that another tenant has permission to temporarily keep a cat, but this in no way gave the Tenant permission to keep her cat.
- [9] The Landlord submitted that he did allow the Tenant to keep a dog in the rental unit, however the Tenant has failed to clean up after it. Letters from other tenants state that it has been an ongoing issue that the Tenant allows the dog onto other yards and does not pick up after it. The Landlord also provided photographs of dog waste left on the Residential Property.
- [10] The Landlord submitted photographs from the inspection on July 6, 2023. The photographs showed multiple holes and cracks in walls, a doorframe with no door on it, and messes on the floor, including dog waste. The Landlord testified that the smell he experienced from the inspection was very strong.
- [11] The Landlord submitted a text message to the Tenant from July 3, 2023, stating that he was concerned about the smell and damage in the rental unit. The text message further requested a day to inspect the rental unit, to which the Tenant confirmed July 6, 2023 as an appropriate day.

Tenant's Evidence and Submissions

- [12] The Tenant submitted that the complaints of disturbances at the Residential Property are exaggerated. The Tenant further submitted that she has not received a written warning and that eviction is unjustified. The Tenant submitted that she only recalls one time the police attended the rental unit. The Tenant further submitted that she was not at the Residential Property on the last weekend of July, 2023, and was not responsible for the disturbance.
- [13] The Tenant alleged that there was a double standard with her not being allowed to keep a cat as another tenant, who is the Landlord's mother, is allowed to keep a cat.
- [14] The Tenant testified that the issue surrounding dog waste issue is no longer a problem. In the text messages submitted by the Tenant, the Landlord warns the Tenant that dog waste must be properly disposed.
- [15] The Tenant submitted that much of the damage photographed by the Landlord has since been repaired by her brother. The Tenant testified that her brother made repairs on July 25, 2023, and July 28, 2023. The Tenant acknowledged that there is still damage to the front door and that the damaged areas have not been painted. The Tenant did not submit any photographs or other evidence of the repairs made to the rental unit.
- [16] The Tenant further submitted that the Landlord violated her privacy and quiet enjoyment. The Tenant testified that the Landlord told her that he would be entering the rental unit in order to make a repair to the unit's washer and dryer. However, he used this as an opportunity to perform an inspection and take pictures of the rental unit. The Tenant testified that the photographs showed her personal items and a portrait of her son, which violated her privacy.

Analysis

Notice of Termination

- [17] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsections 61.(1)(d), (f), (g), 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:*

- (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;*
- (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.*

[18] 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.

[19] The Officer notes that the Landlord submitted into evidence numerous written submissions from complaining tenants. Despite the written submissions not being affirmed, the Officer finds that the Landlord has established a common complaint regarding unreasonable disturbance of other tenants. The Officer further notes the Landlord's photographic evidence of significant damage to the rental unit. The Officer notes that while the Tenant claimed that repairs had been made, she provided no photographic evidence of repairs, there was no direct testimony from the purported repair person, and the Tenant acknowledged that damage remained unfixed.

[20] The Officer finds that based on the totality of the evidence the Tenant or individuals allowed onto the Residential Property by the Tenant have unreasonably disturbed other tenants, contrary to sub-subsection 61.(1)(d) of the *Act*. Furthermore, the Officer finds that the Tenant has unreasonably damaged the Residential Property and failed to adequately repair it within a reasonable time, pursuant to sub-subsections 61.(1)(f) and (g) of the *Act*.

[21] The Officer finds that based on the totality of the evidence the Notice is valid and the Application to dispute the Notice of Termination is denied.

Breach of Tenant's Quiet Enjoyment

[22] The Tenant claims that the Landlord violated her privacy by advising he would be entering the rental unit to make repairs on the washer and dryer, when in fact he entered the rental unit to perform an inspection. The Tenant claims that this breached her right to quiet enjoyment, pursuant to sections 22., 23.(b)(iii), and 59. of the *Act*, which state:

22. 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.*

23. Landlord's right to enter rental unit restricted

A landlord shall not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (b) the landlord provides written notice to the tenant at least 24 hours before the time of entry and the purpose of the entry is to*
 - (i) carry out an inspection of the rental unit, if*
 - (A) the inspection is for the purpose of determining whether the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under this Act, and*
 - (B) it is reasonable to carry out the inspection;*

59. Application respecting contravention

Where a landlord contravenes the obligations set out in sections 22 to 24 and 26 to 29, a material term of the tenancy agreement or a statutory condition set out in Part 2, the tenant may make an application to the Director under section 75 for an order as specified under subsection 85(1).

- [23] The Officer notes that the Landlord provided advance notice that he would be inspecting the rental unit at that time, pursuant to subsection 23.(b). The Officer finds that the Tenant has not provided sufficient evidence on a balance of probabilities to establish that the Landlord breached the Tenant's right to quiet enjoyment.

Conclusion

- [24] The Notice of Termination is valid and the Application is denied.
- [25] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on September 8, 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 5:00 p.m. on September 8, 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 1st day of September, 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.