

Introduction

- [1] On May 29, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking the following remedy:

I am a former Tenant and request compensation from my former Landlord for a bad faith eviction.

- [2] The Tenant served the Landlord with the Application.
- [3] The Tenant is seeking \$7,200.00 (\$900.00 in rent multiplied by 8 months) in compensation.
- [4] On August 28, 2023 a teleconference hearing was held before a Residential Tenancy Office (the "Officer"). At the hearing, the Tenant, one of the Landlords and legal counsel for the Landlord appeared before the Officer and participated in the hearing.

Preliminary Matter

- [5] At the start of the hearing the Landlords' legal counsel submitted two arguments to why the Application should be dismissed and that a finding on the Application's merits is not necessary. The first argument relies on subsection 75.(1) of the *Act* which states:

Except as otherwise provided in this Act, a tenant, a landlord or a person representing a tenant or landlord may, during or within six months after termination of a tenancy agreement, make an application to the Director to determine

- (a) a question arising under this Act or the regulations;*
- (b) whether a provision of a tenancy agreement has been contravened; or*
- (c) whether a provision of this Act or the regulations has been contravened.*

- [6] The Landlord provided into evidence Rental Office Order LD22-220, which found and ordered that *the rental agreement between the parties for the Premises shall terminate effective 11:59 p.m. on July 8, 2022. The Tenant shall vacate the Premises by this time and date.*
- [7] The Landlords' argument is that the Tenant vacated without dispute on July 8, 2022 and filed the Application on May 29, 2023 which is outside the six-month limitation period for a party to file an application. Therefore, the Landlords' argument is that the Application ought to be dismissed.
- [8] The Officer disagrees with the Landlords' first argument. The Officer notes that the Application is made under subsection 75.(1) of the *Act*, however, the Application is pursuant to subsection 65.(1) of the *Act*. The Officer finds that when an application is made pursuant to subsection 65.(1) of the *Act*, the limitation period is pursuant to subsection 65.(2) of the *Act* which states:

Time limitation

No application may be made under subsection (1), more than one year after the former tenant vacated the rental unit.

- [9] The Officer finds that the Tenant vacated without dispute on July 8, 2022 and filed the Application on May 29, 2023. This type of application extends the Tenant's ability to apply from six months to one year from vacating the rental unit. Therefore, the Officer finds that the Tenant is within their statutory limitation to file the Application.

- [10] The Landlords' second argument to why the Application should be dismissed relies on the legal Doctrine of *res judicata*. Specifically, the Landlords' second argument intends to rely on *cause of action estoppel* to dismiss the Application. Simply put, *cause of action estoppel* precludes a person from bringing an action against another when the same cause of action has been determined in earlier proceedings by a court of competent jurisdiction. The Landlords' legal counsel argued that the issue and remedies sought in the Application were adjudicated and a finding made in Order LD22-220.
- [11] The Officer disagrees with the Landlords' second argument. Order LD22-220 was the result of an application filed by the Tenant to dispute an eviction notice and a return of one months' rent. The finding of good faith in Order LD22-220 is a result of a required analysis set out in the legislation. The Tenant was not seeking a remedy for a bad faith eviction at the time because the Tenant was not yet evicted. Further, subsection 65.(3) of the *Act* states:

Previous determination of good faith

In determining an application under subsection (1), the Director may find that the landlord gave a notice of termination in bad faith despite a previous finding to the contrary.

- [12] The Officer finds that despite Order LD22-220 finding that the notice of termination was served in good faith this does not bar the Tenant from seeking a remedy under subsection 65.(1) of the *Act*. Therefore, the Officer finds that the Application should not be dismissed due to the Landlords' two arguments.

Issue to be Decided

- i. Is the Tenant entitled to compensation for a bad faith eviction?

Summary of the Evidence

- [13] On October 1, 2020 the Landlords and the Tenant entered into a verbal month-to-month tenancy agreement for the Residential Property. Rent was \$900.00 due on the first day of the month, however, the parties agreed during the winter months of 2021 and 2022 to reduce the rent to \$800.00. A security deposit of \$450.00 was required and paid. The Tenant vacated the Residential Property on July 8, 2022 as a result of an eviction order from the Island Regulatory and Appeals Commission (the "Commission").

Tenant's Evidence and Submissions

- [14] The Tenant testified that the eviction in July 2022 was not in good faith. The Tenant testified that in May 2022 she received a notice of termination from the Landlords requesting possession of the Residential Property for *own use*. The Tenant testified that the Landlords were separating and that one of them was to live in the Residential Property. The Tenant testified that the neither of the Landlords moved into the Residential Property and that they never separated. The Tenant testified that she witnessed the Residential Property advertised for rent at \$1,600.00 and that the Landlords' advertisement had a different name associated to ownership. The Tenant testified that she witnessed the Landlords together on numerous occasions in the later months of 2022 which assisted in her suspicions that they did not separate.
- [15] The Tenant's witness testified that he visited the Tenant on different occasions and that he and the Tenant resided across the street from the Residential Property. The Tenant's witness testified that he never witnessed either Landlord or anyone enter or leave the Residential Property during the time he was visiting the Tenant. The Tenant's witness testified that he resided with the Tenant for approximately two weeks. The Tenant's witness testified that he is aware of numerous issues between the Tenant and the Landlord and believes that there was motive for the Landlords to evict the Tenant in bad faith.

Landlords' Evidence and Submissions

- [16] The Landlords' denied the Tenant's claim that she was evicted in bad faith. The Landlords' legal counsel summarized their position as follows. The Landlords were, at the time, going through a separation. The intent was that one of the Landlords was to move into the Residential Property. However, the Landlords were able to reconcile and in December 2022 decided to live together. The Landlords' stated that they were separated for a total of six months. Further, the Landlords admitted to advertising the Residential Property in May 2023. However, the Landlords' denied using a fake name. The Landlord used his middle name in the advertisement and that \$1,600.00 was the \$900.00 rent plus utilities, which was not included in the Tenant's tenancy agreement.
- [17] The Landlords provided into evidence signed affidavits from themselves and witnesses. The Landlords' argument is that they acted in good faith and terminated the Tenant's tenancy agreement lawfully.

Analysis

- [18] The Officer notes that in these types of applications it is the Tenant's responsibility to prove, on a balance of probabilities, their claim. The Officer notes that subsection 65.(1) of the *Act* states:

Notice given in bad faith

A former tenant may make an application to the Director under section 75 to determine whether a landlord gave a notice of termination under sections 62, 63 or 64 in bad faith.

- [19] The Officer finds that based on the testimony of the parties and the documentary evidence provided that the Landlord served a Notice of Termination by Lessor of Rental Agreement (Form 4) in May 2022 for own use pursuant to sub-subsection 15.(1)(a) of the *Rental of Residential Property Act* (the "Former Act"). The Officer finds that subsection 65.(1) of the *Act* only allows a former tenant to apply for such a remedy if they were evicted under sections 62, 63 or 64 in bad faith. In this case, the Tenant was not evicted under any of the sections prescribed and that there are no transitional provisions in the *Act* to permit the Tenant from seeking such a remedy under the current set of facts.
- [20] Further, the Officer notes that the Commission in Order LR23-48 with a similar set of facts stated:
- [17.] While the Landlord did serve a Form 4 back in October 2022 pursuant to subsection 8.(d)(3) of the Rental of Residential Property Act (the "old Act"), section 65 of the RTA does not provide any transitional provisions to permit claims for compensation under the RTA to apply to past evictions under the old Act. Accordingly, the Tenant's application for compensation for an alleged bad faith eviction is denied.*
- [21] Therefore, the Officer finds that the Tenant is not entitled to a remedy under subsection 65.(1) of the *Act* and the Application is denied.

Conclusion

- [22] The Application is denied.

IT IS THEREFORE ORDERED THAT

A. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 5th day of September, 2023.

(sgd.) Cody Burke

Cody Burke
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.