

Introduction

- [1] On August 3, 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 a Notice of Termination pursuant to subsection 64.(6) of the *Act*.
- [2] Attached to the Application was a Notice of Termination dated July 28, 2023, effective September 26, 2023, (the “Notice”). The Notice was personally served on the Tenants for the following reason:
- I want to renovate the premises in the manner described on Appendix “A” and the renovations cannot be carried out while you are occupying the premises.*
- [3] The hearing was scheduled for August 29, 2023, when at that time a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). Both the Tenant and the Landlord participated.

Preliminary Matter

- [4] The Rental Officer notes on April 8, 2023, the Government of Prince Edward Island repealed the *Rental of Residential Property Act* (former Act) and proclaimed the *Residential Tenancy Act* (new Act). This means the new *Residential Tenancy Act* (the “RTA”) is the governing law as of April 8, 2023, for landlord and tenant disputes on Prince Edward Island.
- [5] The Officer notes that subsection 64(8) of the RTA places a ban on evictions for the purposes of renovations or repairs until November 1, 2023, save for circumstances which are necessary to preserve the residential property or for health and safe reasons. Should this exception apply, the RTA sets out a specific process for Landlords to follow when seeking to evict a Tenant for repairs/ renovations of a rental unit.
- [6] Specifically, section 64 of the RTA states,

64. Landlord’s notice for demolition, conversion, repairs, renovations

(1) A landlord may give a notice of termination if the landlord, after obtaining all necessary permits and approvals as required by law, requires possession of the rental unit in order to
(a) demolish the rental unit;
(b) convert the rental unit to a non-residential use; or
(c) subject to the approval of the Director under subsection (2), do repairs or renovations to the rental unit that are so extensive that they require vacant possession of the rental unit.

Director’s approval required

(2) Before giving notice for the purpose of clause (1)(c), the landlord shall apply to the Director in accordance with the regulations, providing the information specified by the Regulations, and request the Director’s approval to provide the notice to the tenant.

- [7] For further clarity, Section 7 of the Residential Tenancy Regulations (“the Regulations”), prescribes

7. Landlord’s notice for demolition, conversion, repairs, renovations

(1) For the purposes of subsection 64(2) of the Act, the landlord shall complete the form approved by the Director¹ and provide it to the Director for review to ensure it meets the criteria of clause 64(1)(c) of the Act.

¹ Form 6 – Landlord Application for Approval For Renovations/Repairs

Prohibition

(2) A landlord shall not give notice² to a tenant under clause 64(1)(c) of the Act until the Director has reviewed the information provided by the landlord and the landlord has received the approval of the Director to give the notice.

- [8] The RTA and its Regulations place an obligation a Landlord to obtain the Director's approval prior to giving notice to a Tenant. Moreover, there is also the current moratorium on evictions for renovations/repairs on Prince Edward Island. In the present matter the Landlord failed to comply with this prescribed process. There is no evidence of the Landlord obtaining the Director's Approval or even commencing the process for same. Accordingly, the Rental Officer reserves any decision on the merits of the Landlord's notice.
- [9] The RTA also makes clear the requisite notice³ period between the service of the notice and the subsequent termination date, at Section 64(3),

Period of notice

(3) The date for termination specified in the notice of termination shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term, and
(a) where the notice of termination is for a purpose under clause (1)(a) or (b), shall be at least six months after the notice is given; and
(b) where the notice of termination has been approved by the Director for a purpose under clause (1)(c), shall be at least six months after the date of the Director's approval or the date the notice is given to the tenant, whichever is later.

Conclusion

- [10] The Notice is not valid and the Application is allowed. The rental agreement between the parties shall remain in full force and effect.
- [11] The Landlord may file and serve a new application and/or notice against the Tenants pursuant to the process prescribed by the Act.
- [12] The Rental Officer also notes that at the hearing there was a discussion about a mutually agreeable vacate date or a possibility of the Tenant residing at the rental unit during renovations, and therefore encourages the parties to reengage in these discussions.

IT IS THEREFORE ORDERED THAT

- A. The rental agreement will continue to be in full force and effect. The Tenant may continue to reside in the rental unit.

² Form 4B – Landlord Notice of Termination

³ Unless early termination is granted pursuant to s61(7)&(8)

DATED at Charlottetown, Prince Edward Island, this 6th day of September, 2023.

(sgd.) Jeremy Coffin

Jeremy Coffin
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.