

Introduction

- [1] On July 27, 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 61.(5) of the *Act*.
- [2] Attached to the Application was a Notice of Termination by Landlord (Form 4A) dated July 17, 2023, effective August 31, 2023, (the "Notice"). The Notice was personally served on the Tenant for the following reason:

*You or someone you have allowed on the property have disturbed or endangered others;
You have knowingly given false information about the rental unit*

- [3] On August 25, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant's Representative and the Landlord participated.

Issue to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [4] On December 22, 2020, the Tenant and the Landlord entered into a written fixed-term tenancy agreement for the Residential Property commencing February 1, 2021, which remains ongoing. The Residential Property consists of a three bedroom/two bathroom single family dwelling. Rent is \$1,000.00 per month due on the first day of the month and there was no security deposit.

Landlord's Evidence and Submissions

- [5] The Landlord's evidence is summarized as follows. The Landlord stated that on the morning of July 14, 2023, she called the Tenant and requested access to the property the following day between 4-5pm for a real estate assessment and to obtain a copy of the key. The Landlord stated that the Tenant was agreeable to this. The Landlord testified that she has a restraining order against the Tenant's son ("R.P.") and this became problematic when she arrived at the property the next day and R.P. was at the property. The Landlord stated that because R.P. was at the property she told her realtor, J.N., to perform the assessment without her. The Landlord further testified that R.P.'s truck was blocking the laneway and he refused to allow J.N. access onto the property and that R.P. called the police and told them that he owned the property and that the Landlord and J.N. were trespassing. The Rental Officer queried the Landlord on the method of her notice to access the property and the Landlord confirmed that it was via phone call.
- [6] The Landlord's witness, J.N., stated that he is a realtor and was contacted by the Landlord to carry out an assessment of the rental property. J.N. further stated that when he drove by the house the Landlord told him that she was unable to be there because R.P. was at the property. J.N. testified that when he approached the property he was told by R.P. that he couldn't access it and that R.P. refused his entry. J.N. further testified that he told R.P. he was just doing his job but was still refused access onto the property to carry out the assessment.

Tenant's Evidence and Submissions

- [7] The Tenant's evidence is summarized as follows. The Tenant's representative, A.P., stated that she knows that the Tenant was called by the Landlord notifying her of the assessment. A.P. stated that the Tenant wasn't refusing entry, she just didn't have another key to give the Landlord at the time of the assessment. A.P. stated that there is a provision in the lease agreement that allows the Tenant to reside at the property for as long as she wants and that this is a matter for the Courts and not IRAC.

Analysis

- [8] The Landlord served the Notice pursuant to section 63(1)(a) of the Act, which states:

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,**
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person*

- [9] Sections 22 and 23 of the Act instruct that a Landlord's right to enter a rental premises is generally restricted on account of a Tenant possessing a right to quiet enjoyment, with some limited exception. Specifically,

22. Tenants right to quiet enjoyment

A tenant is entitled to quiet enjoyment of the rental unit including, but not limited to, the right to

- (c) exclusive possession of the rental unit, subject only to the landlord's right to enter the rental unit in accordance with section 23.*

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
 - (ii) allow a potential mortgagee, insurer or appraiser of the residential property to view the rental unit**

- [10] The Rental Officer notes that the Act does not give the Tenant the ability to restrict the Landlord's realtor/appraiser access to the rental unit for the purposes of conducting an assessment, if the Landlord has provided the Tenant proper notice, regardless of the Tenant's reasons for doing so.

- [11] The *Act* expressly requires that the Landlord's notice be in writing. In the present matter, the Landlord provided her notice by way of a telephone call and therefore her notice was invalid. Although the notice was invalid, notice is simply required for entry into the "rental unit"¹ not the "residential property"² at large. In essence, the Tenant was within its Tenant rights to refuse entry into the rental unit but not to refuse entry onto the residential property. Therefore, the Rental Officer finds that refusing J.N. access onto the residential property R.P. interfered with the Landlord's lawful interest in her property.
- [12] The Rental Officer also finds that R.P. gave false information to law enforcement with respect to the ownership of the residential property thereby further breaching the *Act*.
- [13] The Officer finds no favor with the argument that the Tenant wasn't refusing entry. R.P. knew of the restraining order and knew that by being on the property the Landlord would be unable to enter and outright refused the entry of the assessor. The Officer finds that this action by R.P., was premeditated and intentional, and therefore the Landlord has provided sufficient evidence, on a balance of probabilities, to establish that the Tenant has breached Section 61 of the *Act* thereby warranting eviction.

Conclusion

- [14] The Application is denied and the Notice is valid save for the termination date.
- [15] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on September 22, 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 22, 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 6th day of September, 2023.

(sgd.) Jeremy Coffin

Jeremy Coffin
Residential Tenancy Officer

¹ Section 1(o) defines "rental unit" as "living accommodation rented..."

² Defined at Section 1(p) and includes the parcel of land which the rental unit is located.

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.