

Introduction

[1] On July 24, 2023, the Tenants filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is disputing a Landlord Notice of Termination pursuant to subsection 61.(5) of the *Act*.

[2] Attached to the Application was a Landlord Notice of Termination (Form 4) dated July 17, 2023, effective August 15, 2023, (the "Notice"). The Notice was served on the Tenants for the following reasons:

*You or someone you have allowed on the property have disturbed or endangered others;
and;*

You have failed to comply with a material term of the tenancy agreement.

[3] On July 17, 2023, the Landlord served the Notice on the Tenants by posting it on the Tenants' door. On July 24, 2023, the Tenants served the Application on the Landlord by mail.

[4] On September 1, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two Tenants ("N.H." and "J.D.") and a representative for the Landlord ("Representative") participated in the hearing.

Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?

Summary of the Evidence

[5] On May 1, 2018, the Landlord and the Tenants entered a written month-to-month tenancy agreement. The Residential Property is a unit in an 11-unit apartment building. Rent is \$846.00 per month, due on the first of each month. A security deposit of \$500.00 was required and paid.

Landlord's Evidence and Submissions

[6] The Representative testified that he has received numerous complaints from other tenants regarding a smell of marijuana coming from the Residential Property. The Representative testified that he believes the Tenants have been smoking in the rental unit, as well as within fifteen feet of the exterior of the building, causing smoke to enter the windows of other tenants. The Representative testified that he feels a responsibility to evict the Tenants as there are children and people with compromised immune systems in the building who are sensitive to the smell.

[7] The Representative submitted copies of text messages from six other tenants complaining about the smell of marijuana in the building caused by the Tenants. The Representative submitted copies of text messages sent to the Tenants, including a message sent on February 6, 2023, warning that he has received complaints from other tenants regarding marijuana usage in the rental unit.

[8] The Representative further submitted photographs of no smoking signs throughout the building, including directly on the main door.

[9] The Representative testified that he experienced the smell first-hand when he went to deliver the Notice. The Representative testified that the smell at the door was so strong that he believes it must have been from smoking inside the Residential Property. The Representative testified that he has not seen the Tenants smoke marijuana directly inside the Residential Property.

Tenants' Evidence and Submissions

- [10] N.H. and J.D. testified that no Tenants have ever smoked within the rental unit. J.D. testified that for a period of time, he and another Tenant smoked by the porch of the building, but then moved to the far side of the property beyond fifteen feet when they became aware that the smoke was entering the windows of other tenants. J.D. and N.H. testified that any smell detectable within the building would only have been from any smell lingering on the Tenants' clothing.
- [11] J.D. testified that once he and the other Tenants became aware of complaints regarding their marijuana usage, they took steps to suppress the smell. J.D. testified that they now seal their smoking equipment in plastic bags and place them in a drawer as soon as they finish in order to trap the smell. J.D. further testified that he also changes his clothes and puts them in an enclosed bag after smoking to further reduce any smell.
- [12] N.H. testified that she does not smoke and that she is also sensitive to the smell of marijuana. She testified that she would never tolerate smoking within the rental unit, and that the Tenants have never smoked within the rental unit. N.H. testified that the smell coming off of the Tenants' clothing had been strong in the past, but she has not smelled anything since they have made a habit of placing the clothes in sealed bags after smoking.
- [13] The Tenants further submitted that other tenants within the building smoke marijuana and that they may also be responsible for some odours within the building.

Analysis

- [14] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsections 61.(1)(d) 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;*
- (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.*

- [15] The Officer notes that in 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.

- [16] The Officer notes the lack of direct evidence from the Landlord establishing that the Tenants smoked marijuana within the rental unit. The Officer notes the lack of any inspection performed on the rental unit or witness testimony supporting the claim that the Tenants smoked within the rental unit. The Officer further notes the testimony of the Tenants that they have not smoked within the rental unit, that since being warned they do not smoke within fifteen feet of the building, and that they have since taken steps to mitigate any lingering smell on their clothing from smoking outside.
- [17] The Officer further finds based on the totality of the evidence that the Landlord has failed to establish that the Tenants smoked within the rental unit. Based on the totality of the evidence the Officer finds that the Notice is invalid and the Application is allowed. The tenancy agreement shall continue in full force and effect.
- [18] The Officer reminds the Tenants that smoking within the rental unit or within fifteen feet of the building is not permitted and the Landlord will not tolerate any infringements on these conditions.

Conclusion

- [19] The Notice is invalid and the Application is allowed.
- [20] The tenancy agreement between the parties shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 6th 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 **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.