

Introduction

- [1] On July 29, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (Docket 23-566) (the “First Application”) with the Residential Tenancy Office (the “Rental Office”). The First Application is disputing a Landlord Notice of Termination pursuant to subsection 61.(5) of the *Act*.
- [2] Attached to the First Application was a Landlord Notice of Termination (Form 4A) dated July 28, 2023 effective August 31, 2023 (the “Notice”). The Notice was served on the Tenant for the following reason:

You or someone you have allowed on the property has caused damage to the rental unit.
- [3] On July 28, 2023 a representative of the Landlord served the Notice on the Tenant by posting it to the front door of the rental unit.
- [4] On August 8, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (Docket 23-604 and 23-605) (the “Second Application”) with the Rental Office. The Second Application alleges the Landlord contravened the *Act* and is seeking two months return of rent and that the Landlord install a bike rack on the Residential Property.
- [5] On August 15, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (Docket 23-607) (the “Third Application”) with the Rental Office. The Third Application alleges the Landlord unlawfully increased the rent. The Tenant is seeking a reduction in rent to the legal rent along with a return of the unlawful increase in rent.
- [6] All documents were served properly on the parties.
- [7] On August 31, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant, and two representatives of the Landlord participated at the hearing. All three applications were heard together.

Issues to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?
- ii. Did the Landlord contravene the *Act*?
- iii. Was the rent unlawfully increased for the Residential Property?

Summary of the Evidence

- [8] On January 1, 2018 the Tenant and former landlord entered into a written fixed term tenancy agreement for the Residential Property. The fixed term converted to a month-to-month agreement. The Residential Property is a 12-unit apartment building. The Landlord purchased the Residential Property in July 2020 and took over responsibility of the tenancy agreement with the Tenant. Rent is \$934.25 due on the first day of the month. A security deposit of \$450.00 was required and paid. Numerous documents and videos were submitted into evidence by the parties.

Landlord’s Evidence and Submissions (issue i)

- [9] The Representatives for the Landlord testified that issues started to arise around February-March 2023 after the Tenant and their partner separated. The Tenant began complaining about numerous issues throughout the rental unit and Residential Property. The Representatives testified that each and every issue brought forward by the Tenant was handled and fixed quickly. However, the Tenant continued to send numerous text messages, messages, and overall complaints to the representatives.

- [10] The Representatives testified that the Tenant has caused damage to the Residential Property such as the appliances and door knobs. The Representatives testified that the Tenant delayed and refused access to repair and maintenance people. The Representatives submitted into evidence a hand written letter from the Landlord's property maintenance person. The Representatives testified that the rental unit the Tenant lives in requires more work and attention than any other unit in the Residential Property. The Representatives testified that the reason for this is because the Tenant does not take care of the rental unit's appliances.

(issue ii)

- [11] The Representatives testified that the Landlord has not contravened the *Act* or the tenancy agreement. The Representatives testified that parking is included in the tenancy agreement and that the rental unit has one parking spot. The Representatives testified that the parking spot availability fulfills the tenancy agreement, and that the Tenant not owning a vehicle and only a bike does not require the Landlord to install a bike rack. The Representatives testified that the Landlord should not have to return two months' rent. The Representatives denied harassing or breaching the Tenant's quiet enjoyment. The Representatives testified that the Tenant has sent numerous threatening and aggressive messages to the Representatives.

(issue iii)

- [12] The Representatives testified that the Landlord did not own the building at the time that the rent was increased. The Representatives testified that the Landlord should not be liable for what the previous landlord may have done. The Representatives testified that they were unaware of what the former tenant paid or what the former landlord increased the rent to at the time. The Representatives testified that the rent only increased by the allowable in 2021.

Tenant's Evidence and Submissions (issue i)

- [13] The Tenant testified that she did not cause any damage to the rental unit. The Tenant testified that the repairs required to the appliances were due to regular wear and tear. The Tenant testified that she uses the appliances regularly and any time an issue comes up she reaches out to the Landlord as is her responsibility as a tenant. The Tenant testified that she never complained about issues previously due to her partner telling her not to complain. The Tenant testified that it was not a healthy relationship and once it ended she was able to bring the issues in the rental unit to the Landlord.

(issue ii)

- [14] The Tenant testified that parking is a term and service of the tenancy agreement. The Tenant testified that she does not have a vehicle and uses a bike. The Tenant testified that she must carry the bike to the rental unit which is located on the third floor. The Tenant testified that there is no where she can store her bike without threat/fear of eviction. The Tenant testified that it is an inexpensive investment and would save the Landlord from insurance issues if a tenant is to get hurt carrying their bike upstairs.
- [15] The Tenant testified that she is seeking two months return of rent because the Landlord is harassing her and breaching her quiet enjoyment. The Tenant testified that the Landlord served her with an unlawful eviction. The Tenant testified that the representative has a personal issue with her because other tenants in the Residential Property are noisy and they have not received evictions.

(issue iii)

- [16] The Tenant testified that she had a conversation over messenger with the former tenant of the rental unit. The Tenant testified that the former tenant disclosed to her that he was paying \$850.00 per month. The Tenant submitted into evidence the conversation with the former tenant along with an e-mail thread between the former tenant and the former landlord. The Tenant testified that the e-mail thread establishes that the former tenant lived in the rental unit and that he vacated in November 2017. The Tenant testified that she moved in at the end of December 2017 and was paying \$900.00 per month.
- [17] The Tenant testified that the allowable rent increase in 2017 was 1.50% and that a \$50.00 rent increase was above the allowable rent increase.

Analysis**Issue i: Does the Tenant have to vacate the Residential Property due to the Notice?**

- [18] The Landlord's reason for terminating the tenancy agreement is pursuant to sub-subsection 61.(1)(f) of the Act, which state:

Landlord's notice for cause

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

The tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to the rental unit or the residential property.

- [19] The Officer notes that in such matters where there is a dispute over a Notice of Termination by Landlord, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice.
- [20] As it relates to the First Application, the Officer heard testimony, reviewed documentary evidence and video evidence from the parties. Based on the totality of the evidence, the Officer finds that the Landlord has failed to establish its claim to terminate the tenancy agreement.
- [21] The Landlord wished to terminate the tenancy agreement because of alleged damage in the rental unit caused by the Tenant. However, the evidence does not establish this allegation. The Officer finds that the evidence suggests that the Landlord is seeking to terminate the tenancy agreement because of the volume, frequency and perhaps the tone of the messages and complaints filed by the Tenant to the Landlord. Simply put, the Officer finds that this is not a valid reason to terminate a tenancy agreement. Therefore, the Notice is invalid and the First Application is allowed. The tenancy agreement shall continue in full force and effect.

Issue ii: Did the Landlord contravene the Act?

- [22] The Officer notes that sub-subsections 21.(1)(a) and (b) and section 22 of the Act states:

Terminating or restricting services or facilities

- (1) *A landlord shall not terminate or restrict a service or facility if*
- (a) *the service or facility is reasonably related to the tenant's use and enjoyment of the rental unit as living accommodations; or*
- (b) *the services or facility is a term of the tenancy agreement.*

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] The Officer notes that in such matters where a tenant alleges that a landlord contravened or breached the *Act* or the tenancy agreement, it is the tenant's burden, or onus to prove, on a balance of probabilities, any and all claims.
- [24] As it relates to the Second Application, the Officer heard testimony, reviewed documentary evidence and video evidence from the parties. The Tenant requests that the Landlord install a bike rack as it is a condition of the tenancy agreement. The Officer finds that the Landlords have not breached the tenancy agreement nor sub-subsection 21.1(1)(a) and (b) of the *Act*. The Officer finds that the Landlord has not restricted or removed the Tenant's right to park. The evidence suggests that due to unfortunate life circumstances the Tenant lost her vehicle and is not utilizing the parking spot provided. The Tenant has elected to use a bike. The Officer finds that the tenancy agreement provides parking for the Tenant but that does not translate nor does it require the Landlord to provide a bike rack for the Tenant. Therefore, the Tenant's claim that the Landlord contravened sub-subsection 21.1(1)(a) and (b) and/or the tenancy agreement is denied.
- [25] Further, the Tenant has failed to establish that the Landlord breached section 22 of the *Act*. The Officer finds that a Landlord serving an eviction notice on the Tenant does not mean that the Landlord has "harassed" or breached the quiet enjoyment of the Tenant. The Tenant stated that the eviction was "unlawful." The Officer disagrees with the Tenant's characterization of the Notice. Further, the Officer finds that despite the parties' relationship souring over the past months, there is no evidence to conclude that the Landlords have breached section 22 of the *Act*. The claim is denied. Therefore, the Second Application is denied.

Issue iii: Was the rent unlawfully increased for the Residential Property?

- [26] The Officer notes that in such matters where a tenant alleges that a landlord unlawfully increased the rent, it is the tenant's burden, or onus to prove, on a balance of probabilities, their claim.
- [27] As it relates to the Third Application, the Officer heard testimony and reviewed documentary evidence from the parties. The Tenant alleges that the former tenant paid \$850.00 per month as of November 2017 and when she moved into the rental unit in December 2017 she paid \$900.00. The Tenant provided evidence that establishes that she had a conversation with the former tenant and that the former tenant was paying \$850.00. The Tenant submitted into evidence her tenancy agreement which establishes she paid \$900.00 just one month after the former tenant vacated.
- [28] The Officer notes that the allowable rent increase in 2017 was 1.50%. If the previous landlord raised the rent by the allowable for the Tenant, then the legal rent should have been \$862.75. The Officer finds that the Tenant has established her claim that the rental unit was subject to an unlawful rent increase.

- [29] The Officer notes that the Landlord's argument is that it should not be liable for an unlawful rent increase from the previous landlord. The Officer finds this argument is not compelling. A landlord takes on all the responsibilities, benefits and liabilities of a property when purchased. It is a landlord's responsibility to do their due diligence before purchasing any property. The Officer notes that simply reviewing the rent ledger from the rental unit would have revealed that a rent increase from \$850.00 to \$900.00 happened and would have been above the 1.50% allowable rent increase for that year. This issue could have been discussed and resolved in the agreement of purchase and sale between the former landlord and the Landlord. The evidence suggests this did not happen.
- [30] Therefore, the Third Application is allowed. The Officer finds that the legal rent is \$850.00 and effective immediately sets the rent for the rental unit at the Residential Property to \$850.00 due on the first day of the month.
- [31] The Officer finds that the Tenant is entitled to recover the unlawful increase pursuant to subsection 50.(8) of the Act which states:

Tenant may recover unlawful increase

Where a landlord collects a rent increase that does not comply with this Part, the tenant may make an application to the Director under section 75 to recover the amount of the increase.

- [32] The Landlord shall pay or credit the Tenant \$4,374.75 forthwith. The calculation is as follows:

January 1, 2018 to June 2021 (42 months' x \$50.00 increase) = \$2,100.00
July 2021 to September 2023 (27 months' x \$84.25 increase) = \$2,274.75

Conclusion

- [33] The First Application is allowed, the Notice is invalid and the tenancy agreement shall continue in full force and effect.
- [34] The Second Application is dismissed.
- [35] The Third Application is allowed.
- [36] The rent for the rental unit for the Residential Property is \$850.00 due on the first day of the month effective immediately.
- [37] The Landlord shall pay or credit the Tenant \$4,374.75 forthwith.

IT IS THEREFORE ORDERED THAT

- A. The Notice is invalid and the tenancy agreement shall continue in full force and effect.
- B. The rent for the rental unit for the Residential Property is \$850.00 due on the first day of the month effective immediately.
- C. The Landlord shall pay or credit the Tenant \$4,374.75 forthwith.

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