

Introduction

- [1] On August 12, 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 (the "Notice") pursuant to subsection 61.(5) of the *Act*, and is seeking a finding that the Landlord unlawfully entered the Residential Property, pursuant to subsection 22.(c) of the *Act*.
- [2] Attached to the Application was the Notice dated August 9, 2023, effective September 8, 2023, (the "Notice"). The Notice was served on the Tenants for the following reasons:

You have permitted an unreasonable number of occupants in the rental unit; and

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

- [3] All documents were served properly on the parties.
- [4] On September 7, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both Tenants ("S.S." and "G.S."), a representative for the Landlord ("L.L."), and two witnesses for the Landlord ("N.P." and "D.S.") participated in the hearing.

Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?
- ii. Did the Landlord enter the Residential Property unlawfully?

Summary of the Evidence

- [5] On May 11, 2023, the Tenants and the Landlord entered into a written one-year fixed-term tenancy agreement. The Residential Property is an apartment inside a 25-unit apartment building. Rent is \$909.00 per month due on the first day of the month. A security deposit of \$454.50 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord submitted that the Tenants have permitted a guest to stay at the Residential Property for an unreasonably long period of time, which justifies the termination of the tenancy agreement.
- [7] N.P. testified that due to limited parking at the property, they became aware in July, 2023 that a non-resident of the building was parking overnight for multiple days. N.P. and D.S. later determined that this person was a guest of the Tenants. N.P. further testified that she determined that the Tenants likely had another person staying with them when she observed what she believed to be a mattress being delivered to the building.
- [8] N.P. and D.S. testified that they received complaints of excess noise coming from the Tenants' rental unit when the guest was there late at night. The Landlord submitted a letter from a tenant describing recent loud noises coming from the Tenants' rental unit at night.
- [9] N.P. and D.S. testified that the Tenants and their guest would go on regular evening walks that were noisy and disruptive to other tenants. The Landlord submitted a copy of a text message from July 27, 2023, advising the Tenants that there have been complaints regarding noise while in the parking lot. D.S. testified that on July 28, 2023, he approached the Tenants in the parking lot and asked how long the guest would be staying, as it was already approaching a third week. D.S. testified that he was told the guest was S.S.'s brother and that he would be staying two more weeks.

- [10] On July 31, 2023, L.L. sent the Tenants a letter that stated that the rental unit was approved for only the two Tenants and that the third person and the extra mattress must be removed immediately to avoid an eviction.
- [11] The Tenants called the Landlord's office and it was agreed that the guest could stay for one more week, until August 8, 2023.
- [12] N.P. and D.S. testified that they spoke with G.S. and S.S.'s brother on August 2, 2023, where they asked G.S. whether they had received the letter on July 31, 2023, and spoke about fire code rules surrounding the number of occupants.
- [13] N.P. testified that S.S.'s brother's car was not in the parking lot of the building by August 7, 2023. However, she saw the Tenants' guest on August 9, 2023, after the deadline to leave. An eviction notice was given that day. N.P. and D.S. testified that the Tenants' door was not opened to place the Notice between the door and the doorframe.
- [14] N.P. testified that on August 14, 2023, she gave the Tenants notice that she intended to show the unit to new potential renters as she had not heard from the Tenants since posting the Notice and assumed they would be leaving. The Tenants filed the Application later that day.
- [15] N.P. testified that the Tenants' guest has been at the Residential Property a number of times since the Notice was posted on August 9, 2023.

Tenant's Evidence and Submissions

- [16] The Tenants testified that they are entitled to let S.S.'s brother visit the rental unit and that eviction is unjustified. The Tenants testified that the Landlord has been keeping an unreasonably close watch on who they allow in the rental unit and that they have been unfairly treated.
- [17] The Tenants testified that S.S.'s brother has a separate rental unit of his own nearby. G.S. testified that S.S.'s brother returned to PEI on July 18, 2023, after an extended period out of the country. G.S. submitted a copy of a boarding pass showing arrival for that day. G.S. testified that S.S.'s brother stayed with the Tenants for several weeks as he had been dealing with depression and needed their support.
- [18] G.S. testified that he and S.S.'s brother were confronted by D.S. and N.P. on August 2, 2023. G.S. testified that there was no reason for the Landlord's representatives to confront them and that S.S.'s brother felt humiliated and offended by the experience.
- [19] G.S. testified that S.S.'s brother stopped staying continuously at the rental unit on August 8, 2023, as agreed with the Landlord. However, G.S. testified that he might have been by on August 8 or August 9, 2023, to take some personal items.
- [20] G.S. testified that on August 9, 2023, he found the Notice wedged between the door and the doorframe. G.S. testified that the door to the rental unit is sealed tight and that the Notice could only have been put there by the Landlord's representatives opening the door and gaining access to the rental unit. The Tenants submitted that this unlawful entry was a breach of their privacy and right to quiet enjoyment.
- [21] G.S. testified that since August 9, 2023, he estimates that S.S.'s brother has spent six nights at the rental unit, and that S.S.'s brother typically visits three or four times per week. G.S. testified that he and S.S.'s brother often study together in the evenings.
- [22] G.S. further testified that he did not believe that at any point they were making any excess noise in the rental unit that could be detected by neighbouring tenants.

Analysis

Notice of Termination

[23] The relevant sections of the Act instruct:

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:

(c) there is an unreasonable number of occupants in the tenant's rental unit;

(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.

[24] 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.

[25] The Officer notes that L.L. testified that the Landlord's claim of a breach of a material term pursuant to sub-subsection 61.(1)(h) of the Act was regarding the term of the tenancy agreement that only the listed Tenants would be the occupants of the rental unit.

[26] The Officer finds that the Landlord has not provided sufficient evidence to establish that termination of the tenancy agreement is warranted. The Officer notes that the Tenants were given permission by the Landlord for S.S.'s brother to stay consecutive nights at the Residential Property until August 8, 2023. The Officer notes that there is conflicting testimony between the parties on whether S.S.'s brother stayed on August 8 and 9, 2023. The Officer further notes the Tenants' testimony that S.S.'s brother has only stayed overnight at the Residential Property approximately six times over the past month.

[27] The Officer notes that the Notice is invalid and the tenancy agreement shall continue in full force and effect.

Unlawful Landlord Entry

[28] The Tenants' Application for a finding that the Landlord unlawfully entered the Residential Property is pursuant to subsection 22.(c) of the Act, which states:

22. 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.

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

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:

- (a) the tenant gives permission at the time of the entry or not more than 10 days before the entry;*
- (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*
 - (i) carry out a repair or replacement or do work in the rental unit,*
 - (ii) allow a potential mortgagee, insurer or appraiser of the residential property to view the rental unit, or*
 - (iii) carry out an inspection of the rental unit, if*
 - A. the inspection is for the purpose of determining whether the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under this Act, and*
 - B. it is reasonable to carry out the inspection;*
- (c) the landlord or, with the written authorization of the landlord, the landlord's agent, requires access to the rental unit to allow a potential purchaser to view the rental unit and the landlord has given written notice to the tenant at least 24 hours before the time of entry.*

59. Application respecting contravention

Where a landlord contravenes the obligations set out in sections 22 to 24 and 26 to 29, a material term of the tenancy agreement or a statutory condition set out in Part 2, the tenant may make an application to the Director under section 75 for an order as specified under subsection 85(1).

- [29] The Officer notes that in a dispute over unlawful entry by the Landlord, it is the Tenants' burden or onus to prove, on a balance of probabilities, that the Landlord entered the Residential Property unlawfully.
- [30] The Officer finds that the Tenant has not provided sufficient evidence to establish that the Landlord entered the Residential Property unlawfully. The Officer notes that the Tenants' claim of unlawful entry was speculative and unsupported by evidence. The Officer notes the testimony of D.S. and N.P. that the Notice was wedged between the door and the doorframe without opening the door. The Application for a finding of unlawful Landlord entry is denied.

Conclusion

- [31] The Notice of Termination is invalid and the Application is allowed in part.
- [32] The tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

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

DATED at Charlottetown, Prince Edward Island, this 12th 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.