

Introduction

- [1] On August 22, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking:

To dispute a Notice of Termination (Form 4).

- [2] Attached to the Application was an Eviction Notice (Form 4A) dated August 21, 2023, effective August 21, 2023, (the "Notice"). The Notice was posted on the Tenant's door on August 21, 2023. The Notice did not have a reason indicated however the Landlord served a one-page statement with the Notice outlining the reason for the Notice. The Tenant stated he understood the Landlord's reason for serving him with the Notice. The evidence suggests that the Notice was served pursuant to subsection 61.(1)(e) of the Act:

You or someone you have allowed on the property have disturbed or endangered others.

- [3] On September 14, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant 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] In May of 2020 the Tenant and the Landlord entered into a verbal month-to-month tenancy agreement for the Residential Property. The Residential Property consists of a single apartment in five-unit building. Rent is \$390.00 per month due on the first day of the month. A security deposit of \$200.00 was paid.

Landlord's Evidence and Submissions

- [5] The Landlord stated on August 21, 2023, the Tenant approached the Landlord and notified the Landlord that the cat of a neighboring tenant was keeping the Tenant up at night. The Tenant told the Landlord that he has spoken to the building's caretaker about the matter but the Tenant did not feel his concerns were being addressed.
- [6] After speaking to the Landlord about his concerns, the Tenant stated if it happened again that night then the Tenant was going to throw a match into his apartment and then leave. The Landlord stated he took that as a threat the Tenant was going to burn the building down. The Landlord stated he called the police about the matter. The Landlord stated he would not press charges if the Tenant was evicted but if the Tenant was not evicted then he would press charges.

Tenant's Evidence and Submissions

- [7] The Tenant agreed he spoke to the Landlord about his neighbor's cat. The Tenant denied saying the threat as alleged by the Landlord. The Tenant stated the Landlord also only gave him one day's notice to vacate. He stated he feels the Landlord is blackmailing him by stating the Landlord would not press charges if the Tenant is evicted.

- [8] The Tenant submitted into evidence copies of text messages between the Landlord and the Tenant from after the Tenant had received the Notice. In the text messages the Tenant states that the Landlord asked him to burn the Landlord's buildings when the Tenant worked for him previously. The Tenant did not wish to discuss the text messages during the hearing because of a possible police investigation.

Analysis

- [9] Based on the evidence submitted by the Landlord, the Officer notes that the Landlord's reason for the Notice is pursuant to subsection 61.(1)(e) of the Act which states:

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

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant.

- [10] The Landlord testified the Tenant stated that the Tenant would throw a match into the Residential Property and walk away if the Landlord did not deal with the issue of the neighbour's cat. The Tenant denied that he stated this to the Landlord.
- [11] The Officer notes that the evidentiary onus rests on the Landlord where an eviction of a Tenant is sought for alleged behavioral issues. In this case, the parties had conflicting accounts of what had occurred and there were no independent witnesses who were present during this conversation between the parties.
- [12] The Officer finds that based on the totality of the evidence the Landlord has not provided sufficient evidence to establish, on a balance of probabilities, that the Tenant has breached subsection 61.(1)(e) of the Act.

Conclusion

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

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed and the Notice is invalid.
- B. The tenancy agreement between the parties shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 19th day of September, 2023.

(sgd.) Mitchell King
Mitchell King
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.