

Introduction

- [1] On September 8, 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 with the Application was a *Notice of Termination by Landlord* (Form 4A) dated August 29, 2023 effective September 29, 2023 (the "Notice"). The Notice was given to the Tenant for the following reason:
1. *You or someone you have allowed on the property have disturbed or endangered others.*
- [3] All documents were properly served to the parties.
- [4] On September 26, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing themselves. The Representative appeared, representing the Landlord with five (5) witnesses. Three of the witnesses provided oral witness testimony.

Issue to be Decided

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

Summary of the Evidence

- [5] In September 2020 the Landlord and the Tenant entered into a written fixed term tenancy agreement for a rental unit in the Residential Property. The Residential Property is an 18-unit building, and the tenancy agreement since converted to a month-to-month agreement. Rent is \$943.00 due on the first day of the month. A security deposit of \$540.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Representative testified that she has received numerous complaints from other tenants in the building over the past several months. The Representative testified that the nature of these complaints were that the Tenant was having loud arguments and overall loud noise was coming from the Tenant's rental unit. There was smoking in the rental unit and on the rental unit's patio. And there are unknown individuals associated with the Tenant and/or the Tenant's daughter, who are coming and going from the Residential Property, causing mischief and vandalism in the Residential Property's parking lot.
- [7] The Representative testified that on numerous occasions over the past months the police have been called to the Residential Property, and visited the Tenant's rental unit. The Representative testified that the Tenant was provided with numerous verbal warnings about the noise and smoking. The Representative testified that she does not want to evict anyone, however, this complaints and issues have gone on for too long and the other tenants are entitled to quiet enjoyment. The Representative testified that on August 29, 2023 she served the Notice on the Tenant by posting the Notice to the front door of the rental unit.
- [8] The Representative testified that there were other complaints and issues which happened after the Notice was served (in response to the Tenant's testimony – see below). The Representative clarified that the Tenant was not being evicted because of these specific complaints.
- [9] The Representative submitted into evidence the e-mail complaints from other tenants in the building.

Landlord's Witnesses' Testimony

- [10] K.M. testified that she moved into the building in 2022 and lives directly below the Tenant's rental unit. K.M. testified that on numerous occasions she had heard loud arguments, noises and shouting coming from the Tenant's rental unit. K.M. testified that she called the police on different occasions and that given the intensity of the arguments, she was concerned for the well-being of the Tenant. K.M. testified that many of these arguments and overall noise happened between midnight and 6:00 a.m., and she would lose sleep as a result.
- [11] K.M. testified that she has brought up these noise complaints to the Representative. K.M. testified that the Tenant confronted her in the parking lot, where the Tenant yelled profanities at her. K.M. testified that the Tenant was upset because she called the police and the police ended up breaking the Tenant's front door. K.M. testified that she also smells smoke from the Tenant's rental unit. K.M. testified that she witnessed unknown individuals attempting to break into cars in the parking lot, and cars being vandalized. K.M. testified that she cannot have her grandchildren over due to the noise and issues which constantly happen with the Tenant and the Tenant's daughter.
- [12] G.H. testified that he has lived in the building since 2019. G.H. testified that he hears a lot of arguing and yelling from the Tenant and the Tenant's daughter. G.H. testified that he witnessed the Tenant and other individuals smoking on the Tenant's patio. G.H. testified that he has confronted the Tenant's daughter about smoking. G.H. testified that he also smells smoke in the Tenant's rental unit when he walks by.
- [13] A.H. testified that he is G.H.'s family member and is currently living in the building. A.H. testified that he witnessed vandalism in the parking lot.

Tenant's Evidence and Submissions

- [14] The Tenant admitted that she has had arguments with her daughter. The Tenant testified that her daughter has struggled with some mental health and personal issues. The Tenant testified that her daughter is a loud talker. The Tenant testified that her safety is not in question. The Tenant admitted to confronting K.M. in the parking lot, and admitted she was angry about the situation. The Tenant testified that she only wanted to know what K.M. said to 911, which would make them break the Tenant's door. The Tenant denied any involvement, or association with the individuals who have vandalized or stole items in the parking lot. The Tenant testified that she believes she knows who vandalized her daughter's car and it is an ongoing issue. The Tenant testified that other tenants in the building have harassed her daughter.
- [15] The Tenant denied smoking in the rental unit and patio. The Tenant testified that her and her daughter will smoke in their vehicle or go to another property. The Tenant testified that she does not own a dog, and no noises would be the result of a dog. The Tenant testified that many other tenants smoke in the building, so the smell of smoke could be from any other person.
- [16] The Tenant provided additional written submissions into evidence. The Tenant submitted into evidence a photograph of the rental unit's door, which was broken due to police being called to the Residential Property.

Analysis

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

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

- (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.*

- [18] The Officer makes comment 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.

- [19] In this case, the Landlord seeks to terminate the tenancy agreement because the Tenant has unreasonably disturbed other tenants in the Residential Property with loud/disruptive noises, arguing, smoking and permitting unknown individuals on the Residential Property who have caused mischief and vandalism. The Tenant has denied some of these allegations, with the exception of admitting to some louder arguments occurring between the Tenant and her daughter.

- [20] The Officer notes that he heard testimony from the Representative, and three witnesses as it relates to the allegations against the Tenant and the Tenant's daughter. Additionally, the Officer has reviewed the documentary evidence submitted by the parties. The Officer finds as follows:

General noise and argument complaints

- [21] The Officer finds that the Tenant did not dispute that there were some loud arguments between herself and her daughter. The Tenant's testimony provided context to the nature of these arguments. The Officer notes that the Landlord's witness, K.M., provided direct testimony as it relates to her experience with the noise, arguments and experience living below the Tenant. The Officer further notes that he heard from other tenants and occupants in the building as it relates to their direct testimony to the noise complaints. The Officer finds that the totality of the evidence establishes that the Tenant has unreasonably disrupted other tenants in the building.

- [22] The Officer makes comment that despite his finding, he does not wish to disregard or minimize the Tenant's testimony as it relates to the personal issues and stress that exist in her and her daughter's life, which may be a cause for the arguments. However, given that the direct evidence provided by the Landlord's witnesses, along with the length of time that these complaints or issues have continued, the Officer finds that the Landlord has established a valid ground to terminate the tenancy agreement.

- [23] As a result, the Officer finds that the Notice is valid and the Application is denied. The Officer notes that the effective date of the Notice is September 29, 2023. **Based on the facts presented in this case the Officer finds it appropriate to extend the Notice period, and the effective date to 5:00 p.m. on October 31, 2023 pursuant to sub-subsection 85.(1)(n) of the Act which states:**

Powers of the Director

After hearing an application, the Director may make an order

Extending or reducing any notice period under this Act.

The other issues on the Notice

- [24] Despite the Officer terminating the tenancy agreement, the Officer finds that the allegations that the Tenants have permitted unknown individuals onto the Residential Property, or that the Tenant is associated with these individuals is unfounded. The Officer finds that the Landlord has not provided sufficient evidence to substantiate this claim. As for the allegation that the Tenant is smoking in the rental unit or the rental unit patio, the Officer notes that he heard direct testimony from G.H. that he witnessed the Tenant and another individual smoking on the rental unit's patio. Additional evidence was provided that the smell of smoke lingers in the rental unit. The Officer finds that despite the testimony heard, the Officer finds that there is not enough evidence to conclude that the Tenant has, at the very least, repeatedly smoked in the rental unit, and/or the rental unit's patio. This claim is not substantiated.

Conclusion

- [25] The Notice is valid and the Application is denied.
- [26] The tenancy agreement shall terminate effective 5:00 p.m. on October 31, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- [27] The Tenant is responsible to pay October 2023 rent in full and on time.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on October 31, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- B. The Tenant is responsible to pay October 2023 rent in full and on time.
- C. 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 29th 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 **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.