

Introduction

- [1] On September 5, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2A) dated September 2, 2023 (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 30, 2023 effective September 30, 2023 (the “Notice”). The Notice was given to the Tenant for the following reasons:

You have failed to comply with a material term of the tenancy agreement; and
You have sublet the rental unit without the landlord’s consent.

- [3] All documents were properly served to the parties.
- [4] On October 3, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant appeared, representing themselves. The Landlord appeared, representing themselves.

Issue to be Decided

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

Summary of the Evidence

- [5] On May 1, 2018 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. At the end of the fixed term, the tenancy agreement converted to a month-to-month agreement. The Residential Property is a rental unit situated in a 41-unit building. Rent is \$988.48 due on the first day of the month. A security deposit of \$500.00 was required and paid.

Landlord’s Evidence and Submissions

- [6] The Landlord testified that the Tenant without consent allowed another person to move into the Residential Property. The Landlord testified that this individual called her regarding some maintenance issues in the rental unit. The Landlord testified that she did not know who this person was, and when she inquired, learned that the Tenant permitted her to move into the rental unit. The Landlord testified that she had the person fill out a rental application.
- [7] The Landlord testified that the Tenant has permitted people to move into the rental unit in the past without seeking consent. The Landlord testified that the Tenant breached the *Act* and the tenancy agreement. The Landlord testified that the tenancy agreement was updated in January 2023 and that any visitors are only permitted to stay one week, unless given written consent from the Landlord.

Tenant's Evidence and Submissions

- [8] The Tenant testified that he did have a subtenant living in the rental unit in 2021 without the permission of the Landlord. The Tenant apologized as he was not aware he needed to get the Landlord's consent. The Tenant testified that in August 2023 a friend needed a place to stay, while they recovered from a medical procedure. The Tenant testified that everything moved faster than expected and the friend moved into the rental unit. The Tenant did not dispute the Landlord's testimony. However, the Tenant testified that the friend was not a subtenant. The friend only stayed at the rental unit for two weeks. The friend filled out the rental application because they wanted to follow the rules. The Tenant testified that the friend was not sure how long the recovery would take so she did not tell the Landlord an exact time. The Tenant testified that he only lives in the rental unit.

Analysis

- [9] The Landlord's reason for terminating the tenancy agreement is pursuant to sub-subsections 61.(1)(h) and (i) 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

- (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.*

The tenant purports to assign or sublet the rental unit without first obtaining the landlord's written consent as required by section 30.

- [10] 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.
- [11] In this case, the Landlord seeks to terminate the tenancy agreement because the Tenant has failed to comply with a material term of the tenancy agreement and sublet the rental unit without obtaining written consent from the Landlord. The Tenant has not outright denied the allegations, however, apologized and provided context in relation to the allegations against him.
- [12] The Officer finds that the Landlord provided the tenancy agreement into evidence, and with the testimony provided, has established that the Tenant has failed to comply with a material term of the tenancy agreement. Specifically, the Officer finds that the Tenant allowed someone to live in the rental unit without permission from the Landlord (Schedule D: Clause 4 of the tenancy agreement). However, the Officer notes that subsection 61.(1)(h) requires the Landlord to provide written notice to the Tenant (effectively a warning) to provide the Tenant an opportunity to correct the situation. The Officer finds that the Landlord did not provide the Tenant with a warning, but rather immediately served the Notice instead. Therefore, the Officer finds that it is not appropriate to terminate the tenancy agreement under subsection 61.(1)(h) of the *Act*.
- [13] With regard to subsection 61.(1)(i) of the *Act* the Officer finds that the Landlord has established that the Tenant sublet in the past and permitted an individual in the rental unit for two weeks without the consent of the Landlord. The Officer notes that the Tenant is apologetic and testified that the individual only lived in the rental unit for two weeks, and no longer lives in the rental unit.

- [14] Based on the testimony of the parties the Officer finds that the Tenant has not complied with section 30 of the *Act*. This is a valid ground to terminate the tenancy agreement. However, after reviewing the evidence and considering the testimony of the parties the Officer finds it appropriate in this case to provide the Tenant with leniency. The Officer finds that the Landlord has made it clear that the Tenant must follow the tenancy agreement and the *Act*. The Tenant cannot sublet the rental unit without expressed permission from the Landlord, and any guests staying beyond 1 week must have the expressed permission from the Landlord to do so. **Any further breach from the Tenant may result in the termination of the tenancy agreement.** Therefore, the Officer finds that the Notice is invalid and the Application is allowed.

Conclusion

- [15] The Notice is invalid and the Application is allowed.
- [16] The tenancy agreement shall continue in full force and effect.
- [17] **Any further breach of the *Act* or the tenancy agreement by the Tenant may result in the termination of the tenancy agreement.**

IT IS THEREFORE ORDERED THAT

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

DATED at Charlottetown, Prince Edward Island, this 4th day of October, 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.