

Introduction

- [1] On September 5, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Return of Rent Application") with the Residential Tenancy Office (the "Rental Office"). The Return of Rent Application was filed seeking:

To request a return of rent due to an unlawful rent increase.

- [2] On September 18, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Dispute Application") with the Rental Office. The Dispute Application was filed seeking:

To dispute a Notice of Termination (Form 4).

- [3] Attached to the Dispute Application was an Eviction Notice (Form 4B) dated "15", effective "15 day of dec 12, 2023", (the "Notice"). The Notice was served on the Tenant for the following reason:

I want possession of the rental unit for myself and my child or parent.

- [4] On October 5, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord participated. All documents were properly served on the parties.

Issues to be Decided

- i. Is the Tenant entitled to a return of rent for an unlawful rent increase?
- ii. Does the Tenant have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [5] In February of 2018, 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-family house. The amount of rent payable per month is in dispute. A security deposit of \$300.00 was paid.

Landlord's Evidence and Submissions

- [6] The Landlord stated that he is being evicted from his current residence because his landlord wants to sell the property. He stated he requires the Residential Property to move into because of his eviction. He also stated that he drives to the Residential Property almost every day because he is doing construction to a building on the property and wants to start farming at the Residential Property. The Landlord stated it is expensive for gas to be driving so much and he wants his two children to live with him. He also stated he needs access to the water and electricity at the property for working and farming.
- [7] The Landlord stated he had a tenant willing to rent the Residential Property for \$1,000.00 per month but decided to rent to the Tenant for \$700.00 per month. After the first year he put the rent up to \$800.00 per month and a year later he put the rent up to \$900.00 per month. He stated the current rent at the property is \$900.00 per month but the Tenant does not always pay \$900.00 per month. He stated he could provide receipts to the Tenant if the Tenant wanted them.
- [8] After the hearing the Landlord sent a photograph to the Rental Office. The photograph showed a notice which stated that there will be a showing at 13 Orlebar Street at 12:00 pm on Friday, October 6.

Tenant's Evidence and Submissions

- [9] The Tenant stated she does not believe the eviction notice was served in good faith because it was not served until after the Tenant filed an application for an illegal rent increase. She stated rent was originally \$700.00 per month. In January of 2022, the Landlord stated he would raise the rent to \$800.00 per month so social assistance would provide more money to the Tenant. She stated the Landlord never filed the appropriate paperwork and social assistance only provided \$700.00 per month.
- [10] The Tenant stated in December 2022, the Landlord started charging the Tenant \$800.00 per month, so she had to pay \$100.00 herself and social assistance paid \$700.00 per month. In August of 2023, the Landlord raised the rent to \$900.00 per month, so the Tenant paid the extra \$200.00 herself in August and September 2023. The Tenant stated she has the rent for October 2023 but the Landlord has not attended to collect it. The Tenant stated she pays cash and the Landlord does not provide receipts. She stated she has asked for receipts but the Landlord has not provided them.
- [11] A copy of the photograph the Landlord sent to the Rental Office post-hearing was sent to the Tenant for any submissions she had regarding the photograph. The Tenant submitted that the Landlord has another rental property that he could move into instead of her property.

Analysis

Issue i: Return of rent

- [12] Subsections 47.(1) and (2) of *Part 3* the *Act* state:

A landlord shall not increase rent except in accordance with this Part.

The obligations of a landlord under this Part run with the rental unit and not the tenant.

- [13] Subsections 49.(1), and (4) of the *Act* state:

No landlord shall increase the rent charged for a rental unit by more than the allowable annual increase, except in accordance with section 50.

Notwithstanding subsections (2) and (3), the guideline for the 2023 calendar year is zero per cent.

- [14] Subsection 50.(1) of the *Act* states:

A landlord may request the Director's approval of a rent increase in an amount that is greater than the amount calculated under subsection 49(2) by making an application to the Director under section 75.

- [15] Subsection 50.(8) of the *Act* states:

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.

- [16] The Tenant stated that the Landlord raised the rent to \$800.00 in December of 2022 and then to \$900.00 in August of 2023. The Landlord agreed that he raised the rent to \$800.00 and then to \$900.00. The Officer notes that there is no evidence that the Landlord has applied for a greater than allowable rent increase or that the Landlord increased the rent legally with an allowable rent increase.
- [17] The Officer therefore finds that the Landlord has collected a rent increase that does not comply with *Part 3* of the *Act*. The Return of Rent Application is allowed and the Tenant is entitled to recover the amount of the increase totaling \$1,200.00 calculated as:

\$100.00 x 8 months from December 2022 to July 2023.

\$200.00 x 2 months from August 2023 to September 2023.

Issue ii: Notice for own use

- [18] The Landlord's reason for the Notice is pursuant to subsection 62.(1) of the *Act* which states:

Landlord's notice for landlord's use of property

62.(1) A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by

(a) the landlord;

(b) the landlord's spouse;

(c) a child, parent or a dependent of the landlord or the landlord's spouse; or

(d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child, parent or dependent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the residential property or mobile home park in which the rental unit is located.

- [19] Subsections 62.(1)(a) of the *Act* provides a landlord with the ability to terminate a tenancy agreement to allow the landlord occupancy of the Residential Property. Based on the totality of the evidence and reviewing the legislative requirements set out in subsection 62.(1) of the *Act* the Officer finds that the Landlord has established that he has served the Notice on the Tenant in good faith. The Officer finds that the Notice is valid and the Dispute Application is denied.
- [20] With regards to the vacate period in the Notice, the Landlord stated the Tenant had three months to vacate the Residential Property (September 15, 2023, to December 15, 2023). The Officer notes that subsection 62.(2) of the *Act* states:

The date for termination specified in the notice of termination shall be at least four months after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

- [21] Since the tenancy agreement is a month-to-month agreement, the Officer finds the date for termination shall be at least four months after the Notice was given, which was on September 15, 2023, and the day a period of the tenancy ends is the last day of each month. The Officer therefore finds that the tenancy agreement shall end on January 31, 2024.

[22] The Officer reminds the Landlord that sections 65 and 72 of the Act states:

65.(1) A former tenant may make an application to the Director under section 75 to determine whether a landlord gave a notice of termination under sections 62, 63 or 64 in bad faith.

65.(2) No application may be made under subsection (1) more than one year after the former tenant vacated the rental unit.

65.(3) In determining an application under subsection (1), the Director may find that the landlord gave a notice of termination in bad faith despite a previous finding to the contrary.

65.(4) For the purposes of an application under subsection (1), it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave a notice of termination under section 62 in bad faith if, at any time during the period described in subsection (5), the landlord

(a) advertises the rental unit for rent;

(b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant; or

(c) advertises the rental unit, or the residential property that contains the rental unit, for sale.

65.(5) The period referred to in subsection (4) is the period that

(a) begins on the day the landlord gives the notice of termination under section 62; and

(b) ends one year after the former tenant vacates the rental unit.

Compensation for personal use

72. A landlord shall compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to one month's rent plus reasonable moving expenses in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant.

Conclusion

[23] The Notice is valid, the Dispute Application is denied, and the Return of Rent Application is allowed.

[24] The Landlord shall pay or reimburse the Tenant rent in the amount of \$1,200.00 beginning November 1, 2023.

[25] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on January 31, 2024. The Tenant and all occupants shall vacate the Residential Property by this time and date.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay or reimburse the Tenant rent in the amount of \$1,200.00 beginning November 1, 2023.
- B. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on January 31, 2024. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- 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 11th day of October, 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.