

Introduction

- [1] On September 6, 2023 J.W. on behalf of the Tenant, filed a *Tenant Application to Determine Dispute* (Form 2A) with the Residential Tenancy Office (the "Rental Office"). The Application is disputing an eviction 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 30, 2023 (the "Notice"). The Notice was given to the Tenant for the following reasons:

*You have permitted an unreasonable number of occupants in the rental unit; and
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 October 5, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). J.W. appeared, acting as Public Trustee and Public Guardian for the Tenant. A representative for the Landlord appeared.

Issue to be Decided

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

Summary of the Evidence

- [5] In February 2021 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. Rent is \$630.00 due on the first day of the month. The security deposit was required and paid but the total amount was not known at the hearing.

Landlord's Evidence and Submissions

- [6] C.M. testified that he received complaints from other tenants regarding loud music, the smell of marijuana and numerous people coming and going from the Residential Property. C.M. testified that he has warned the Tenant on different occasions about the named issues above. C.M. testified that some other tenants are permitted to smoke in building because they are grandfathered, but the Residential Property is a non-smoking building.
- [7] The Landlord submitted into evidence photographs of the Residential Property's bathroom, along with photographs from a security camera showing three unknown individuals in the building's hallway. Additionally, the Landlord submitted into evidence a written testimony from the Residential Property's cleaner. The Landlord submitted into evidence a written submission.

Tenant's Evidence and Submissions

- [8] J.W., on behalf of the Tenant, provided the following submissions. The Tenant denies that he permitted an unreasonable number of occupants in the rental unit. The Tenant has visitors from time to time, but these are not occupants and do not live in the Residential Property. The Tenant denies disturbing and/or endangering anyone.
- [9] J.W. provided that the Landlord has not provided sufficient evidence to establish its claim. The loud music allegation has not been proven and that the Tenant's position is that he turns the music off after a specific hour. The Tenant denies smoking in the Residential Property, but the smell may linger on the Tenant's clothing. The Notice should be dismissed as an eviction is not warranted.

Analysis

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

There is an unreasonable amount of occupants in the tenant's rental unit; and

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,*
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- (iii) put the landlord's property at significant risk.*

- [11] 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.
- [12] In this case, the Landlord seeks to terminate the tenancy agreement because the Tenant has permitted an unreasonable amount of occupants into the Residential Property, and has disturbed other tenants in the building.
- [13] The Officer finds that the Landlord has not provided sufficient evidence to establish valid grounds to terminate the tenancy agreement. Regarding the first reason for termination under sub-subsection 61.(1)(c) of the Act, the Officer finds that the Landlord has not provided sufficient evidence to substantiate its claim. The Officer finds that the evidence does not establish that these unknown individuals seen in the photograph provided into evidence are *occupants*. The Officer notes that visitors, friends, family and/or acquaintances of the Tenant are not *occupants* unless they are living in the Residential Property. The evidence does not establish that anyone other than the Tenant lives in the Residential Property.
- [14] Regarding the second reason for termination under sub-subsection 61.(1)(d) of the Act, the Officer finds that the Landlord has not provided sufficient evidence to conclude the Tenant or a person permitted on the Residential Property breached sub-subsection 61.(1)(d) of the Act. The Officer notes that apart from the sole testimony of the Landlord's representative at the hearing, no further witness testimony under oath was provided, and that the Landlord did not submit any objective direct evidence that establishes valid grounds to terminate the tenancy agreement.
- [15] Therefore, the Officer finds that the Landlord has not provided sufficient evidence to establish valid grounds to terminate the tenancy agreement. The Application is allowed and the Notice is invalid.

Conclusion

- [16] The Application is allowed and the Notice is invalid.
- [17] The tenancy agreement 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 11th 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.