

Introduction

- [1] On September 13, 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) (the "Notice") dated September 8, 2023 effective October 31, 2023. The Notice was given to the Tenant for the following reasons:

*You or someone you have allowed on the property have disturbed or endangered others;
and
You have failed to comply with a material term of the tenancy agreement.*

- [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"). 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] In December 2022 the Landlord and the Tenant entered into a verbal month-to-month tenancy agreement for the Residential Property. The Residential Property is a rental unit situated in a 4-unit building. Rent is \$900.00 due on the first day of the month. A security deposit of \$1,000.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord testified that on September 8, 2023 he served the Notice on the Tenant by posting it to the door of the Residential Property. The Landlord testified that he received numerous complaints from other tenants in the building about the Tenant. The Landlord testified that the reason for the complaints mainly surround the amount of foot-traffic coming and going from the Residential Property. Further, there are complaints regarding smoking, parking and police being called to the Residential Property. The Landlord testified that the complaints started in the early summer and have continued. The Landlord testified that he has given the Tenant warnings about the complaints.
- [7] The Landlord submitted into evidence written testimonies from other tenants in the building describing their complaints against the Tenant. The Landlord also submitted into evidence numerous photographs of the Tenant's personal belongings at different locations around the Residential Property's patio and parking lot.

Tenant's Evidence and Submissions

- [8] The Tenant testified that when he first moved into the Residential Property he informed the Landlord and the other tenants about his buy and sell business, which results in people coming and going from the Residential Property. The Tenant testified that he never received a complaint from the Landlord regarding this issue. The Tenant testified that he would make other arrangements if the Landlord would have brought these concerns to him.

- [9] The Tenant testified that he has a 4x8 trailer which he uses regularly. The Tenant testified that every tenant has access to two parking spots, and he does not believe he has done anything wrong parking the trailer in his second parking spot. The Tenant testified that the trailer is not unsightly and is not in the way of other tenants' vehicles. The Tenant testified that he is being harassed about the trailer and does not want confrontation.
- [10] The Tenant testified that he does not smoke in the rental unit. The Tenant admitted that the police did show up to the Residential Property, where he was asked to take a breathalyzer test, but he passed the test and nothing further happened. The Tenant testified that he does not think he has done anything which justifies being evicted and was not provided any warnings.

Analysis

- [11] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsections 61.(1)(d) and (h) 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,*
- (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; and*

the tenant

- (i) Has failed to comply with a material term of the tenancy agreement, and*
- (ii) Has not corrected the situation within a reason time after the landlord has given written notice to do so.*

- [12] 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.
- [13] In this case, the Landlord seeks to terminate the tenancy agreement because the Tenant has unreasonably disturbed or endangered others, and has breached a material term of the tenancy agreement.
- [14] 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)(d) of the Act, the Officer finds that the Landlord has provided some written testimonies from other tenants in the building. The nature of these written submissions highlight concerns and complaints regarding the Tenant's business and behaviour. However, the Officer finds that none of the submissions were under affirmation and that the Landlord did not provide any witnesses at the hearing to provide direct testimony under oath which may have been examined. The Officer finds that the written submissions and the Landlord's testimony (mainly not direct evidence) is not enough for the Officer to conclude a breach of sub-subsection 61.(1)(d) of the Act.

- [15] Regarding the second reason for termination under sub-subsection 61.(1)(h) 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 by the Tenant have breached sub-subsection 61.(1)(h) of the *Act*. Further, the Officer finds that sub-subsection 61.(1)(h)(ii) of the *Act* requires the Landlord to give the Tenant written notice (warning) of their alleged conduct to provide the Tenant an opportunity to correct it. The Officer finds that the Landlord did not provide the Tenant such notice. The evidence does not establish that there are valid grounds to terminate the tenancy agreement.
- [16] 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

- [17] The Application is allowed and the Notice is invalid.
- [18] The tenancy agreement shall continue in full force and effect.
- [19] **The Officer notes that the Landlord and other tenants in the building have shown concern and frustration over the routine foot traffic at the Residential Property due to the Tenant's livelihood. The Officer suggests that the Tenant make alternate accommodations to conduct his business to minimize the disruption to other tenants in the building.**

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.