

Introduction

- [1] On September 18, 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 63.(6) of the *Act*.
- [2] Attached with the Application was a *Notice of Termination by Landlord* (Form 4B) (the "Notice") not dated but effective December 15, 2023. The Notice was given to the Tenant for the following reason:

A buyer wants possession of the rental unit for: buyer.

- [3] All documents were properly served to the parties.
- [4] On October 12, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing themselves. The Landlord did not appear and did not have a representative appear.

Issue to be Decided

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

Summary of the Evidence

- [5] In April 2021 the Landlord and the Tenant entered into a written month-to-month tenancy agreement for the Residential Property. The Residential Property is a rental unit situated in an apartment building. Rent is \$900.00 due on the first day of the month. No security deposit was required.

Landlord's Evidence and Submissions

- [6] The Landlord did not participate at the hearing. The Landlord did not submit any evidence and did not provide any submissions.

Tenant's Evidence and Submissions

- [7] The Tenant testified that she believed she received the Notice on September 15, 2023 and it was posted on the door of the Residential Property. The Tenant testified that the Landlord texted her informing her of the Notice. The Tenant testified that the Landlord is evicting her because he is selling the Residential Property. The Tenant testified that she did not receive a signed affidavit from the buyer, and that she has not seen any 'For Sale' sign on the property.
- [8] The Tenant testified that another tenant in the building received an eviction notice, but is not sure about the other tenants in the building. The Tenant testified that she paid October's rent but does not believe the Landlord cashed the cheque. The Tenant testified that she is seeking the Notice be dismissed.

Analysis

- [9] The Landlord's reason for terminating the tenancy agreement is pursuant to subsection 63.(1) of the *Act* which states:

Landlord's notice when purchaser personally requires unit

A landlord of a residential property that contains fewer than three rental units who has entered into an agreement of purchase and sale of the residential property may, on behalf of the purchaser, give the tenant of a rental unit in the residential property a notice of termination if the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation by

- (a) the purchaser;*
- (b) the purchaser's spouse;*
- (c) a child, parent or a dependent of the purchaser or the purchaser's spouse; or*
- (d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child of the parent or dependent of the purchaser or the purchaser'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.*

- [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 a purchaser wishes to occupy the Residential Property.
- [12] The Officer finds that the Landlord did not submit any evidence and did not provide any submissions as it relates to the Notice. Further, the Landlord did not appear at the hearing to provide any oral testimony. At the hearing, the Officer only heard the undisputed oral testimony from the Tenant. The Tenant also submitted into evidence photographs and text messages.
- [13] The Officer finds that based on the undisputed evidence provided by the Tenant and omission of evidence and testimony from the Landlord, that the Landlord has failed to establish valid grounds to terminate the tenancy agreement. The Officer finds that subsection 63.(1) of the *Act* only permits a landlord to give a notice of termination to a tenant under this subsection if the residential property is fewer than three rental units. The testimony of the Tenant suggests there are more than three units in the Residential Property. Further, the Officer finds that the evidence suggests that the Tenant was never provided with a signed affidavit from the purchaser. Subsection 63.(3) of the *Act* states:

Affidavit required

A notice of termination under subsection (1) or (2) is valid only if the tenant has provided with a sworn affidavit certifying that the purchaser in good faith requires possession of the rental unit for a purpose set out in subsection (1) or (2).

- [14] Further, the Officer makes comment that notwithstanding the lack of merits of the Notice, the Officer finds defects, errors and omissions on the Notice. The Officer finds that the Notice did not have the full address of the Residential Property on it and the Notice was not dated. The Officer notes that section 53 of the *Act* outlines the notice requirements, it states:

Form and content of notice of termination

In order to be effective, a notice of termination shall be in writing and shall

- (a) Be signed and dated by the landlord or tenant giving the notice;*
- (b) Give the address of the rental unit;*
- (c) State the effective date of the notice;*
- (d) Except for a notice of termination under section 56, state the grounds for ending the tenancy;*
- (e) Be given to the other party in accordance with section 100; and*
- (f) When given by a landlord, be in the approved form.*

- [15] As a result, the Officer finds that the Landlord has not provided sufficient evidence to establish valid grounds to terminate the tenancy agreement. Further, the Landlord has given the Tenant the Notice which is not effective and in accordance with section 53 of the Act. 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 13th 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.