

Introduction

- [1] On July 25, 2023, the Tenants filed a Tenant Application to Determine Dispute (Form 2A) (the “Tenants’ Application”) with the Residential Tenancy Office (the “Rental Office”). The Tenants’ Application is disputing a Landlord Notice of Termination pursuant to subsection 61.(5) of the Act.
- [2] Attached to the Tenants’ Application was a Landlord Notice of Termination (Form 4) dated July 18, 2023, effective August 31, 2023, (the “Notice”). The Notice was served on the Tenants for the following reasons

You have permitted an unreasonable number of occupants in the rental unit; and

You have failed to comply with a material term of the tenancy agreement.

- [3] On July 18, 2023, the Landlord served the Notice on the Tenants by email.
- [4] A teleconference hearing was scheduled for August 22, 2023 before a Residential Tenancy Officer (the “Officer”). Two representatives for the Landlord participated, however, the Tenants did not attend and the hearing proceeded in error. It was later discovered that the Notice of Hearing sent to the Tenants’ mailing address was returned as undeliverable. The Rental Office attempted to contact the parties to reschedule the Tenants’ Application.
- [5] As stated, the Rental Office made numerous attempts to contact the Tenants to reschedule their Application. On October 3, 2023, the Tenants were finally reached and the Rental Office was advised that the matter had been resolved. The Landlord’s Representative was contacted and she confirmed that the matter had not been resolved.
- [6] On October 4, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the “Landlord’s Application”) with the Rental Office, with the Notice attached. The Landlord is seeking the following remedy pursuant to the Act:

To request my tenant vacate the rental unit and ordering the Sheriff to put me in possession of the rental unit.

- [7] The Rental Office took the unusual step and scheduled both Applications to be heard together and a teleconference hearing was scheduled for October 10, 2023, before the Officer. A representative for the Landlord (“M.P.”) participated in the hearing. The Tenants did not participate in the hearing. The Rental Office called each of the Tenants, left voicemails, and sent an email before hearing the Landlord’s Application. As this was the second time that the Tenants did not appear, their Tenants’ Application was concluded to be abandoned and the Officer proceeded to hear only the Landlord’s Application.

Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [8] On December 8, 2022, the Landlord and the Tenants entered a written one-year fixed-term tenancy agreement. The Residential Property is a unit in a four-unit apartment building. Rent is \$1,200.00 per month, due on the first of each month. A security deposit of \$1,200.00 was required and paid.

Landlord's Evidence and Submissions

- [9] The Representative stated that the Tenants allowed an unreasonable number of occupants in the rental unit, contrary to the tenancy agreement and sub-subsection 61.(1)(c) of the Act.
- [10] M.P. testified that a pest control worker had previously been sent into the rental unit to respond to a pest complaint. The Landlord submitted undated photos taken by the pest control worker showing two beds in the first bedroom and a third bed in the second bedroom. M.P. argued that this demonstrates that there is an additional occupant living in the rental unit.
- [11] M.P. testified that the Landlord received a complaint from another tenant regarding disturbances from additional occupants of the Tenants' rental unit. The Landlord submitted an email dated July 18, 2023 from another tenant which complained of people constantly going in and out of the unit and that it has caused issues in the building. M.P. testified that she is unaware of any issues having taken place at the rental unit since receiving this complaint.
- [12] The Landlord submitted excerpts of the tenancy agreement which included provisions stating that the unit is for the named Tenants only, additional members of the household must be approved by the property management company, and that subletting is not permitted. M.P. testified that no warning was given to the Tenants regarding the number of occupants prior to serving the Notice. M.P. testified that this was because the Tenants' violation was clear and directly contrary to the tenancy agreement.

Tenants' Evidence and Submissions

- [13] The Tenants did not submit any evidence for this Application.

Analysis

- [14] The relevant sections of the Act instruct:

Landlord's right to possession restricted

51.(4) A landlord shall not regain possession of a rental unit unless

- (b) the Director has made an order directing the tenant to vacate the rental unit and the order has been sent to the sheriff for enforcement.*

Landlord's notice for cause

61.(1) A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

- (c) there is an unreasonable number of occupants in the tenant's rental unit;*
(h) 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.

Tenant presumed to accept notice

61.(6) Where a tenant who has received a notice of termination under this section does not make an application to the Director in accordance with subsection (5), the tenant

- (a) is deemed to have accepted that the tenancy ends on the effective date of the notice of termination; and*
(b) shall vacate the rental unit by that date.

Director may hear disputes between same parties together

82.(2) Where two or more applications are accepted in respect of disputes between the same landlord and tenant, the Director may decide to hear the disputes together.

Powers of the Director

85.(1) After hearing an application, the Director may make an order

(f) directing a tenant to vacate the rental unit on a specified date.

- [15] The Officer notes that in matters where there is a dispute over a Notice of Termination by the Landlord, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice.
- [16] The Officer finds that based on the totality of the evidence presented, the Landlord has failed to establish that an eviction is warranted.
- [17] The Officer notes that the tenancy agreement states that additional occupants in the Residential Property must first be approved by the property management company. However, the Officer notes that under sub-subsection 61.(1)(h) of the *Act*, a tenant must first be given a warning and reasonable time to correct a violation of a material term before issuing an eviction notice under this ground. The Officer notes M.P.'s testimony that no warning was given to the Tenants.
- [18] The Officer finds that the Landlord has failed to establish based on the evidence that the Tenants have allowed an unreasonable number of occupants in the Residential Property contrary to sub-subsection 61.(1)(c) of the *Act*. The Officer notes that the photos submitted by the Landlord suggest only up to one additional occupant in the Residential Property. The Officer notes that the Representative could not speak to how long an additional occupant may have stayed at the Residential Property. The Officer further notes that the other tenant's complaint was dated the same day as the Notice, and the photos submitted of the beds are undated. The Officer finds that the evidence does not establish that an additional occupant resided in the rental unit.
- [19] The Officer finds that the deeming notice provisions pursuant to subsection 61.(6) of the *Act* were not applicable in this matter as the Tenants had previously filed an application which was later abandoned. The Officer heard the Landlord's Application on its merits pursuant to subsection 80.(2) of the *Act*, which states:

80. Decision shall be made on merits

(2) The Director shall make every decision based on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions made under this Part.

- [20] The Officer finds that the Notice of Termination is invalid and the Landlord's Application is denied.

Conclusion

- [21] The Notice of Termination is invalid and the Landlord's Application is denied.
- [22] The tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

A. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 13th day of October, 2023.

(sgd.) Colin Trewin

Colin Trewin
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.