

Introduction

- [1] On October 3, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). 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.

- [2] Attached to the Application was an Eviction Notice (Form 4A) dated August 31, 2023, effective September 30, 2023 (the "Notice"). The Notice was served on the Tenants 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] On August 31, 2023, the Landlord served the Notice on the Tenants by hand delivery. On October 3, 2023, the Landlord served the Application on the Tenants by posting it on the Tenants' door.
- [4] On October 17, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two representatives for the Landlord ("L.J." and "O.N.") and both Tenants ("B.D." and "G.D.") participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [5] The Landlord entered into a written month-to-month tenancy agreement with the Tenants on December 16, 2021. The Residential Property is an apartment in a multi-unit building. Rent is \$405.00 per month, due on the first day of each month. A security deposit was not required.

Landlord's Evidence and Submissions

- [6] The Landlord submitted that the Tenants and their guests have caused extensive issues at the Residential Property for nearly the entire duration of the tenancy. The Landlord submitted that the Tenants possessed three, and later four, cats in the rental unit, contrary to the tenancy agreement. Further, the Landlord submitted that the Tenants and their guests have been disruptive and threatening to other tenants.
- [7] L.J. testified that issues began two weeks into the tenancy when it was discovered that the Tenants had three cats in the unit, despite only having been given permission to have one cat. L.J. testified that various discussions were had and multiple warnings were given to the Tenants regarding the number of cats. The Landlord submitted copies of six written warnings to the Tenants stating that they were required to rehome the additional cats. L.J. testified that despite giving the Tenants numerous opportunities, the Tenants failed to rehome the cats, and in fact, took in a fourth cat later on. The Landlord submitted a copy of the tenancy agreement which states that Tenants may not keep pets in the rental unit, except with the written consent of the Landlord.

- [8] L.J. testified that the Tenants have allowed individuals into the building who have caused significant disturbances, thefts, and police involvement. L.J. testified that the Landlord has receiving numerous complaints of loud and threatening behaviour from individuals permitted in the Tenants' rental unit. L.J. estimated that the Landlord has received around one to two complaints each week regarding the Tenants' disturbances for the majority of the tenancy. L.J. testified that the Tenants' son broke into multiple mailboxes of other tenants in the building. L.J. testified that the Landlord has received reports of the Tenants letting in disruptive visitors as recently as last week.
- [9] L.J. testified that representatives of the Landlord have had numerous conversations with the Tenants regarding the behaviour of themselves and their guests. The Landlord also submitted a copy of a written warning to the Tenants regarding disturbances caused by the Tenants and their guests, dated December 20, 2022.
- [10] The Landlord submitted copies of email exchanges between Landlord representatives detailing an incident where two individuals climbed over a fence, broke into the main door, and were permitted into the Tenants' rental unit. The Landlord further submitted into evidence security camera photographs of these individuals in the hallway of the building.
- [11] L.J. further testified that the deeming acceptance of the Notice of Termination provisions under subsection 61.(6) of the *Act* should apply to allow the Landlord's Application. L.J. testified that the Notice was hand-delivered to one of the Tenants and that the Tenants have not filed any application to dispute the Notice.

Tenants' Evidence and Submissions

- [12] B.D. testified extensively as to why an eviction is not justified, including that the Tenants have been adversely treated by the Landlord, that the Tenants were not informed about the building's pet policy, that the Tenants are allowed to have visitors, and that the visitors who the Tenants have allowed into the building have not caused problems. B.D. further testified that while the Tenants' son was previously allowed into the building and caused problems, the Tenants have since stopped allowing him to enter.
- [13] B.D. testified that many of the people who attend the Residential Property come to see prior tenants. B.D. testified that she does not know many of the people she is alleged to have allowed into the building.
- [14] B.D. acknowledged that the Tenants did not file an application to dispute the Notice. B.D. testified that she was not familiar with the dispute process and did not know what to do.

Analysis

- [15] 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:

- (d) 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;
- (e) 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.

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.

- [16] The Officer finds that based on the totality of the evidence provided, the Landlord has established a valid basis for terminating the tenancy agreement due to repeated and significant breaches of sub-subsections 61.(1)(d) and (e) of the *Act*. The Tenants kept four cats when only one was permitted, and the Tenants repeatedly permitted individuals into the building who were responsible for numerous noise disturbances, thefts, and threatening conduct. The Officer notes numerous written warnings were provided by the Landlord to the Tenants over the course of the tenancy regarding disturbances to others and breaches of the tenancy agreement.
- [17] Further, the Officer finds that the Notice was properly served on the Tenants and that the Tenants did not file a '*Section 75 Application*' (Form 2A) with the Rental Office. The Tenants are therefore deemed to have accepted the Notice, pursuant to subsection 61.(6) of the *Act*.
- [18] The Officer finds based on the evidence and testimony provided at the hearing that the Notice is valid and the Application is allowed.

Conclusion

- [19] The Notice is valid and the Application is allowed.
- [20] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on October 26, 2023, and the Tenants and all other occupants shall vacate the Residential Property by this time and date.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on October 26, 2023, and the Tenants and all other occupants shall vacate the Residential Property by this time and date.
- B. 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 19th 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 **7** 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.