

Introduction

- [1] On September 7, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking:

To dispute a Notice of Termination (Form 4).

- [2] Attached to the Application was an Eviction Notice (Form 4A) dated September 1, 2023, effective September 30, 2023, (the "Notice"). The Notice was served on the Tenant for the following reason:

You or someone you have allowed on the property have disturbed or endangered others.

- [3] On October 17, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, the Tenant's translator, and a Landlord Representative participated.

Preliminary Matter

- [4] At the beginning of the hearing the Representative stated she was not served with a copy of the Application by the Tenant. The Officer noted that a copy of the Application and the evidence package were emailed to the Representative by the Rental Office on October 12, 2023. Therefore, the Officer is satisfied that the Representative received a copy of the Application prior to the hearing and the Representative was able to respond to the Application at the hearing.

Issue to be Decided

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

Summary of the Evidence

- [5] On November 1, 2020, the Tenant and the Landlord entered into a written, fixed-term tenancy agreement for the Residential Property. The parties are in dispute if the current tenancy agreement converted to a month-to-month or is still a fixed term. The Residential Property consists of a single apartment in a 12-unit building. Rent is \$1,160.00 per month due on the first day of the month. A security deposit of \$1,100.00 was paid.

Landlord's Evidence and Submissions

- [6] The Representative stated she had received several complaints from other tenants who do not feel safe regarding the behaviour of the Tenant. The Representative stated that two tenants moved out of the building because of the actions of the Tenant. The Representative stated the complaining tenants are afraid to submit their names because they are afraid of the Tenant.
- [7] The Representative stated she had received complaints of noise coming from the Residential Property. She stated other tenants have heard the Tenant fighting with his son and have observed the Tenant and his son fighting in the parking lot. Tenants have also complained to the Representative because the Landlord's son has been observed sleeping in the building's lobby overnight at different times.
- [8] The Representative stated the Tenant sent her a photograph of his laundry on top of a washing machine. The Tenant stated another tenant took his laundry out and he had to re-wash the laundry. The Representative stated the Tenant's laundry loads are too big and they are breaking the washing machines. A copy of the photograph was submitted into evidence.

Tenant's Evidence and Submissions

- [9] The Tenant stated he did not receive a copy of the evidence package prior to the hearing. The Tenant requested some time to review the evidence package and then provide written submissions. The Officer emailed the evidence package to all parties during the hearing and notified the Tenant he could provide his submissions by Thursday, October 19, 2023, at 4:00 pm.

Post Hearing Evidence and Submissions

- [10] On October 19, 2023, the Tenant provided the Rental Office an emailed submission with his responses to the Landlord's allegations. On October 20, 2023, the Tenant's submissions were provided to the Representative and she was notified she could provide a response before October 22, 2023. No further submissions were provided by the Representative.
- [11] The Tenant stated the Representative has not provided any evidence or witnesses with regards to disturbing other tenants. The Tenant stated it is against his religion to disturb other tenants as alleged by the Representative.
- [12] The Tenant stated he sent the photo of the washing machine to the Representative three years ago. He stated he later learned that it was an elderly person who had removed his clothes and he told the Representative that no follow up was required. The Tenant stated the washing machines are used by several families and the Representative has not shown any proof that the Tenant had damaged any washing machines.
- [13] The Tenant stated police have been to his rental unit for medical emergencies and because the Tenant has called them for other reasons. He stated that the complaining tenant may have heard noise or fighting coming from another rental unit.
- [14] The Tenant stated his son had slept in the lobby one time because his son had forgotten his key. The Tenant was unable to leave work to let his son into the rental unit. He stated his son was afraid to call the Representative to let him into the rental unit.

Analysis

- [15] The Officer begins by referencing the relevant law for the Application. The Landlord's reasons for terminating the tenancy agreement are pursuant to subsection 61.(1)(d) of the *Act*, which states:

61. Landlord's notice for cause

(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,*
 - (iii) put the landlord's property at significant risk.*

- [16] 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.

- [17] The Representative stated that several tenants have complained about the actions of the Tenant. The Representative stated other tenants have complained about the Tenant fighting with his son and that his son is sleeping in the lobby. The Representative stated the Tenant is overloading the washing machines in the building causing them to break.
- [18] The Representative submitted some anonymous messages from other tenants regarding the actions of the Tenant and the Tenant's son. However, none of the complaining tenants testified at the hearing to provide affirmed testimony to provide context to their complaints. The Officer notes that such evidence from the complaining tenants at the hearing would have been of assistance for the determination of this matter. Furthermore, the Representative has not provided any evidence showing that the Tenant had damaged any laundry machines.
- [19] The Officer finds that after reviewing the documentary evidence and the testimony and submissions of the parties that the Landlord has not provided sufficient evidence to establish that the Tenant has breached subsection 61.(1)(d) of the *Act*.

Conclusion

- [20] The Application is allowed and the Notice is invalid.
- [21] The tenancy agreement between the parties shall continue in full force and effect.
- [22] Order LD23-494 was served on the parties by email on October 23, 2023.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 23rd day of October, 2023.

(sgd.) Mitchell King
Mitchell King
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.