

## Introduction

- [1] On October 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 was filed seeking:

*To dispute a Notice of Termination (Form 4).*

*To request a determination that my landlord has arbitrarily or unreasonably withheld consent to the assignment or sublet of a rental unit.*

- [2] Attached to the Application was an Eviction Notice (Form 4A) dated October 10, 2023, effective November 10, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons:

*You are repeatedly late in paying rent;  
You or someone you have allowed on the property have disturbed or endangered others;  
You or someone you have allowed on the property have engaged in illegal activity on the property.*

- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [4] On November 2, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a Tenant witness, and the Landlord participated. At the beginning of the hearing the Tenant stated she was only disputing the Notice and she did not require a determination regarding subletting.

## Issue to be Decided

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

## Summary of the Evidence

- [5] In September of 2022, the Tenant and the Landlord entered into a written, fixed-term tenancy agreement for the Residential Property. The Residential Property consists of a rental unit in a four-plex. Rent is \$1,800.00 due on the first day of the month. A security deposit of \$1,800.00 was paid.

## Landlord's Evidence and Submissions

- [6] The Landlord testified the Tenant has been late in paying rent several times between October 2022 and October 2023. The Landlord submitted a rental ledger into evidence showing the late days.
- [7] The Landlord stated she submitted testimonials from several neighbors who have been disturbed by the Tenant and her family. Some of the issues include the cleanliness of the lawn and backyard, garbage disposal, and behaviour issues in the neighborhood. The Landlord stated many of the complaining neighbors are seniors.
- [8] The Landlord testified police executed a search warrant at the Residential Property and the Tenant's boyfriend was subsequently charged by police.

### Tenant's Evidence and Submissions

- [9] The Tenant stated she was late with rent in October 2022 because the paperwork for social assistance was not processed on time. For the January 2023 rent the Tenant stated she sent in the payment on December 31, 2022, so the delay could have been because of the holiday. In June 2023, she was late with rent but she notified the Landlord she would be late. In July 2023, she paid the rent on July 1, 2023, and she stated it may have gone through late because of the holiday. In October 2023, she stated she only paid part of the rent because she thought she was being evicted. After she found out she would not be evicted right away she paid the rest of October's rent.
- [10] The Tenant stated with regards to the search warrant, she stated it had nothing to do with her or the Residential Property. She stated it was her boyfriend who was charged and nothing illegal was found inside the Residential Property. She stated her boyfriend is no longer allowed at the Residential Property.
- [11] The Tenant stated in the neighbor's testimonials one neighbour complained that she had issues with the Tenant's family starting in 2021, but the Tenant stated she never moved in until 2022. The Tenant stated that none of the neighbors or the Landlord had ever complained about her or her family until she received the eviction notice. The Tenant stated with regards to the smoking and fire pit issues the Landlord had attended the Residential Property and saw that those allegations were false. The Tenant stated that the rest of the allegations put forward by other neighbors were just hearsay and not true.
- [12] The Tenant's father, G.W., testified that he has been at the rental unit on several occasions. He stated he has not seen any issues between the Tenant and the neighbors. He stated he has cut the grass at the property and the Landlord told him the property looked good.

### Analysis

#### Issue i: Does the Tenant have to vacate the Residential Property due to the Notice?

- [13] The Officer begins by referencing the relevant law for the Application. The Landlord's reasons for terminating the tenancy agreement are pursuant to subsections 61.(1)(b),(d),and (e) of the *Act*, which state:

#### **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:*

*(b) the tenant is repeatedly late in paying rent;*

*(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 or a person permitted on the residential property by the tenant has engaged in illegal activity that*

*(i) has caused or is likely to cause damage to the landlord's property,*

*(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*

*(iii) has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant.*

- [14] The Officer makes comment that in such matters where there is a dispute over an Eviction Notice, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice.
- [15] The Officer does not find that the Landlord has provided sufficient evidence that the Tenant has been repeatedly late in paying the rent. The Landlord testified the Tenant has been late in paying rent several times, however the Tenant stated that in some of those instances it could have been banking or holiday delays which caused the late rent. The Officer notes that the rental ledger shows that the Tenant has also paid rent early on different occasions.
- [16] The Officer does not find that the Landlord has provided sufficient evidence that the Tenant has breached subsection 61.(1)(d) of the *Act*. The Landlord submitted testimonials from several neighbors who stated they had been disturbed by the Tenant or the Tenant's family because of behaviour or cleanliness issues. However, none of the complaining tenants testified at the hearing to provide affirmed testimony to provide context and to be tested under scrutiny and examination. The Officer notes that such evidence from the complaining tenants at the hearing would have been of assistance for the determination of this matter.
- [17] The Officer does not find that the Landlord has provided sufficient evidence that the Tenant has breached subsection 61.(1)(e) of the *Act*. The Landlord testified police had executed a search warrant at the Residential Property and the Tenant's boyfriend was subsequently charged by police. However, both parties agreed that the matter was not related to an incident which had occurred at the Residential Property and the Tenant stated her boyfriend is no longer allowed back at the Residential Property.
- [18] Based on the totality of the evidence, the Officer does not find that the Landlord has established, on a balance of probabilities, that the Tenant has breached subsections 61.1(b), (d) or (e) of the *Act*. The Officer finds that the Notice is not valid and the Application is allowed.

### Conclusion

- [19] The Notice is not valid and the Application is allowed.
- [20] The tenancy agreement between the parties shall continue in full force and effect.
- [21] Order LD23-512 was served on the parties by email on November 6, 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 6th day of November, 2023.

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(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.