

Introduction

- [1] On October 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 is disputing a Landlord Notice of Termination pursuant to subsection 62.(4) of the *Act*.
- [2] Attached to the Application was a Landlord Eviction Notice (Form 4B) dated September 25, 2023, effective April 1, 2024, (the "Notice"). The Notice was served on the Tenant for the following reason:
- I want possession of the rental unit for my child or parent.*
- [3] On September 25, 2023, the Landlord served the Notice on the Tenant by registered mail in accordance with subsection 100.(1) of the *Act*.
- [4] On November 7, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a witness for the Tenant ("C.G."), and both Landlords ("A.A." and "D.A.") participated in 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] In December 2011, the Tenant and the Landlord entered a written five-year fixed-term tenancy agreement for the Residential Property. The tenancy agreement converted to a month-to-month agreement on January 1, 2017. The Residential Property is a mobile home site on which the Tenant has placed her mobile home. Rent is \$100.00 per month, due on the first of each month. There was no security deposit required.

Landlords' Evidence and Submissions

- [6] The Landlords submitted 16 pages of documentary evidence, including a development application for the property, an invoice for materials to construct a house on the property, and copies of text message exchanges between an agent of the Landlords and the Tenant.
- [7] A.A. testified that the Landlords' son plans to build a house on the property in April 2024. A.A. and D.A. testified that the house will be for their son's permanent personal occupation. A.A. testified that the Residential Property is the only parcel of land they own and rent as a residential property.
- [8] A.A. and D.A. testified that the Tenant was informed some time prior to the delivery of the Notice that the Landlords' would require possession of the Residential Property to build a house for their son. Regardless, the Landlords argued that the Notice provided more than enough of a notice period so as to comply with the *Act*.

Tenant's Evidence and Submissions

- [9] The Tenant submitted into evidence a one-page note from C.G. into evidence.
- [10] The Tenant testified that she has not received sufficient notice of termination from the Landlords. C.G. argued that there was no firm notification of the termination prior to receiving the Notice on September 25, 2023.

- [11] C.G. argued that because the Tenant owns a mobile home which is located on the Landlords' property, the Tenant is entitled to a 12-month notice period prior to the effective termination date in the Notice. C.G. directly cited subsection 64.(4) of the Act in support of this assertion.
- [12] C.G. argued that more time is needed for the Tenant to move her mobile home and that the situation is further complicated by the fact that the Tenant has sublet the rental unit to other tenants.

Analysis

- [13] The Landlords' reason for terminating the tenancy agreement is pursuant to sub-subsection 62.(1)(c) of the Act, which states:

62. Landlord's notice for landlord's use of property

- (1) *A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by*
(c) *a child, parent or a dependent of the landlord or the landlord's spouse.*

- [14] The Officer notes that in matters where there is a dispute over a Notice of Termination by the Landlords, it is the Landlords' burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice.
- [15] Based on the totality of the evidence provided, the Officer finds that the Landlords have established a valid basis to terminate the tenancy agreement in good faith due to the personal occupation of the Residential Property by the Landlords' son, pursuant to sub-subsection 62.(1)(c) of the Act. The Officer notes that the Landlords testified that their son will be permanently residing on the Residential Property and the Landlords provided an invoice for construction materials and a development application to build a house on the Residential Property.
- [16] The Officer notes that the Tenant argued that subsection 64.(4) of the Act applies so as to require that the Tenant be given a 12-month notice period prior to the effective vacate date. Subsection 64.(4) of the Act states as follows:

Period of notice for mobile home

- (4) *Where a notice of termination is given under this section with respect to a tenancy agreement between the landlord and a tenant who owns a mobile home, the date for termination specified in the notice of termination shall, despite subsection (3), be at least 12 months after the date the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.*

- [17] The Officer notes that subsection 64.(4) of the Act is only applicable to evictions for demolition, conversion, repairs or renovations under subsection 64.(1) of the Act, which states:

64. Landlord's notice for demolition, conversion, repairs, renovations

- (1) *A landlord may give a notice of termination if the landlord, after obtaining all necessary permits and approvals as required by law, requires possession of the rental unit in order to*
(a) *demolish the rental unit;*
(b) *convert the rental unit to a non-residential use; or*
(c) *subject to the approval of the Director under subsection (2), do repairs or renovations to the rental unit that are so extensive that they require vacant possession of the rental unit.*

- [18] The Officer notes that the Landlords are seeking an eviction for the Landlords' use of the Residential Property. The required notice period is provided in subsection 62.(2) of the Act, which states:

Period of notice

- (2) *The date for termination specified in the notice of termination shall be at least **four months** after the notice is given **and shall be the day a period of the tenancy ends** or, where the tenancy is for a fixed term, the end of the term. [emphasis added]*

- [19] The Officer notes that there is no provision under section 62. of the Act which extends the period of notice for mobile homes.
- [20] The Officer finds that it was appropriate for the Landlord to select subsection 62.(1) of the Act as the basis for termination of the tenancy to take possession of the rental unit for Landlords' use. The Officer notes that the rental unit in this tenancy agreement is the mobile home site, not the mobile home. The Officer notes that "rental unit" is defined as including a "mobile home site", pursuant to subsection 1.(o) of the Act, which states;

1. Definitions

- (o) *"rental unit" means living accommodation rented or intended to be rented to a tenant and, with respect to a person who rents or intends to rent a mobile home site for the person's mobile home, includes the mobile home site;*
- [21] The Officer notes that the mobile home itself is the Tenant's property. The rental unit is the land on which the mobile home is situated, and the Landlords require that the mobile home be moved to build a house on the land. The Officer finds that the Landlords are not demolishing the rental unit or converting the rental unit to non-residential use, but are taking possession of the rental unit for continued residential use by building a house on the land.
- [22] The Officer further finds that the Landlords should have listed March 31, 2024, rather than April 1, 2024, as the Tenant's effective vacate date on the Notice, pursuant to subsection 62.(2) of the Act, listed above. As the tenancy agreement is month-to-month and rent is due on the first day of each month, the tenancy periods end on the last day of each month. The Officer finds that the tenancy agreement shall terminate on March 31, 2024, one day prior to the date listed on the Notice. The Officer notes that this revised vacate date still provides the Tenant with a notice period well in excess of four months from the date the Notice was served.
- [23] In addition to the foregoing, the Rental Officer wishes to highlight that at the time of termination, the Tenant may also be entitled to compensation payable by the Landlord, pursuant to section 72. of the Act, which states:

72. Compensation for Personal Use

*A landlord **shall** compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to **one month's rent plus reasonable moving expenses** in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant. [emphasis added]*

Conclusion

- [24] The Notice is valid and the Application is denied.
- [25] The tenancy agreement between the parties shall terminate effective **5:00 p.m. on March 31, 2024**, and the Tenant and all other occupants shall vacate the Residential Property by this time and date.
- [26] **Order LD23-520 was served on the parties by email on November 9, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective **5:00 p.m. on March 31, 2024**, and the Tenant and all other occupants shall vacate the Residential Property by this time and date.
- B. A certified copy of Order LD23-520 may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, this 9th day of November, 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.