

## Introduction

- [1] On October 24, 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 October 18, 2023, effective November 18, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons:

*You or someone you have allowed on the property has caused damage to the rental unit;  
You have not repaired damage to the rental unit;  
You have failed to comply with a material term of the tenancy agreement.*

- [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 9, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord participated.

## Issue to be Decided

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

## Summary of the Evidence

- [5] In January of 2018, the Tenant and the Landlord entered into a written, month-to-month tenancy agreement for the Residential Property. The Residential Property consists of one half of a duplex. Rent is \$650.00 per month and it is paid bi-weekly. A security deposit of \$600.00 was paid.

## Landlord's Evidence and Submissions

- [6] The Landlord submitted 18 pages of documentary evidence which included photographs of the interior and exterior of the Residential Property provided by the Landlord's realtor and an email from the realtor.
- [7] The Landlord testified the door to the rental unit has been kicked in, the rental unit is in disrepair, and there is garbage everywhere. The Landlord stated the Tenant is stockpiling junk in the basement and it is causing electrical issues. He stated he has been contacted by the town regarding by-law issues because of the garbage on the exterior of the Residential Property.
- [8] The Landlord stated the Tenant's dogs have damaged the floor and the smell of dog in the Residential Property is affecting the Landlord's attempted sale of the property. He stated there is dog feces in the yard and sometimes it is difficult to get lawn care because the Tenant does not clean the dog feces.

## Tenant's Evidence and Submissions

- [9] The Tenant did not provide any evidence prior to the hearing.
- [10] The Tenant testified the parties had a previous Rental Office hearing and that was the first time she was ever notified about garbage being an issue. She stated she stores her blue bags on the deck until recycling day. The Tenant stated the basement was partly full when she moved in and the items in the basement belong to previous tenants.

- [11] The Tenant stated she cleans up the dog feces in the yard every day and the children's slide on the lawn belongs to a previous tenant. She stated the rental unit is not "trashed" and just needs some paint. The Tenant stated the tenancy agreement does not state that she cannot store items on the deck.

## Analysis

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

- [12] 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)(f),(g),and (h) 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:*

*(f) the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property;*

*(g) the tenant does not repair damage to the rental unit or residential property, as required under section 28(4), within a reasonable time;*

*(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;*

*Subsection 28.(4) of the Act states:*

#### **Tenant responsible for undue damage**

*A tenant of a rental unit shall repair, in a good and professional manner, undue damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

- [13] 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. In this case, the Officer does not find that the Landlord has provided sufficient evidence to establish that the Tenant has breached subsections 61.(1)(f),(g) or (h) of the *Act*.
- [14] Regarding subsections 61.(f) and (g) of the *Act*, the Officer does not find that the Landlord has established that the Tenant has caused unreasonable damage to the Residential Property or that the Tenant has failed to repair the alleged damage. The Officer does not find that the Landlord's photographs establish that the exterior of the Residential Property shows any unreasonable damage or an excess of dog feces. No photographs of the interior of the Residential Property were provided other than the basement, and the Officer notes that the parties had conflicting evidence about who owns the property in the basement. No evidence was presented showing that there had been any by-law infractions.
- [15] The Landlord submitted photographs and an email from a realtor regarding the condition of the Residential Property. However, the realtor did not testify 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 realtor at the hearing would have been of assistance for the determination of this matter.

- [16] Regarding subsection 61.(h) of the *Act*, the Officer does not find that the Landlord has established that he has provided any written notice to the Tenant regarding failing to comply with a material term of the tenancy agreement or that there has been a breach of a material term of the tenancy agreement.
- [17] The Officer does not find that the Landlord has established that the Tenant has breached subsections 61.1(f), (g) or (h) of the *Act*. The Officer finds that the Notice is not valid and the Application is allowed.

### Conclusion

- [18] The Notice is not valid and the Application is allowed.
- [19] The tenancy agreement between the parties shall continue in full force and effect.
- [20] Order LD23-525 was served on the parties by email on November 15, 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 15th 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.