

Introduction

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

I am a former Tenant and request compensation from my former Landlord for a bad faith eviction.

- [2] The Tenant served the Landlord with the Application by hand delivery in accordance with subsection 100.(1) of the *Act*.
- [3] On November 14, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, two witnesses for the Tenant ("A.W." and "R.W."), the Landlord, legal counsel for the Landlord, and two witnesses for the Landlord ("K.P." and "C.M.") participated in the hearing.

Issue to be Decided

- i. Is the Tenant entitled to compensation for a bad faith eviction?

Summary of the Evidence

- [4] In March 2021, the Tenant and the previous landlord entered into a verbal month-to-month tenancy agreement for the Residential Property. The Landlord purchased the Residential Property in September 2022 and took over the tenancy agreement. The Residential Property is a single detached house. Rent was \$1,100.00 due on the first day of the month. No security deposit was required.

Tenant's Evidence and Submissions

- [5] The Tenant submitted 7 pages of documentary evidence, including written arguments, an unsigned statement from A.W., a signed statement from the Tenant's partner, and copies of Facebook messages between the Tenant and the Landlord.
- [6] The Tenant argued that she was evicted from the Residential Property in bad faith, and is entitled to \$18,313.00 in compensation. This claim includes compensation for two month's rent, storage costs, fuel costs, new furniture, and \$10,000.00 in general damages for pain and suffering.
- [7] The Tenant testified that on January 6, 2023, she received notice that she was being evicted from the Residential Property so that the Landlord's daughter could move into it. The Tenant unsuccessfully disputed the eviction notice and was ordered to vacate on May 31, 2023, by the Rental Office in Order LD23-105. The Tenant testified that she was given an extended vacate date by the Landlord and ended up vacating around July 2, 2023.
- [8] The Tenant testified that she later discovered that the Tenant's daughter did not move into the Residential Property. The Tenant argued that the Landlord gave her a false reason for eviction and that this constitutes a bad faith eviction under the *Act*.

- [9] The Tenant disputed the Landlord's argument that the Landlord's daughter could not move into the Residential Property because it was in worse condition than originally believed. The Tenant argued that the Residential Property was in poor condition throughout the tenancy and that the Landlord was aware of this at the time the eviction notice was given. The Tenant further testified that she advised the Landlord on various repairs that were needed for the Residential Property. The Tenant argued that the Landlord never actually intended to have his daughter move into the Residential Property and that he just claimed she was moving in as a pretext to have the Tenant evicted.
- [10] The Tenant testified that the basement of the Residential Property frequently flooded and that the sump pump belonging to the Landlord stopped working. The Tenant testified that she acquired her own sump pump which was used in the basement. The Tenant testified that she left both sump pumps in the Residential Property when she vacated. The Tenant testified that to her knowledge the basement of the Residential Property was not flooded at the time she vacated.
- [11] The Tenant testified that the Landlord at various times made comments implying that the eviction was not given for the stated purpose in the eviction notice. The Tenant further testified that her partner had interactions with the Landlord in which the Landlord requested more money for rent.

Landlord's Evidence and Submissions

- [12] The Landlord submitted 40 pages of documentary evidence, including written arguments, the tenancy agreement, fuel receipts, and photographs of the condition of the Residential Property.
- [13] Legal counsel for the Landlord argued that the broad substance of the Tenant's Application was already decided by the Rental Office in Order LD23-105. Legal counsel for the Landlord submitted that it was determined at that time that the Tenant's eviction was done in good faith. Legal counsel for the Landlord argued that making a finding of an eviction in bad faith is not based upon whether the Landlord's daughter moved into the Residential Property, but whether that had been the genuine intention of the Landlord and his daughter. Legal counsel for the Landlord submitted that this was always the intention of the Landlord and his daughter, but the condition of the Residential Property was revealed to be in such a state of disrepair that it was unsafe to be occupied.
- [14] Legal counsel for the Landlord argued that the Tenant was evicted under sub-subsection 15.(1)(a) of the *Rental of Residential Property Act* (the "Former Act"), and that the remedy sought by the Tenant is only available for certain evictions which have taken place under the current *Act*.
- [15] The Landlord testified that he purchased the Residential Property in November of 2022, however, he had not seen the inside of the Residential Property in great detail until taking possession of it in July, 2023. The Landlord testified that he was aware of some issues within the Residential Property and attended to make minor repairs on a number of occasions. The Landlord testified that he intended to have K.P. move into the Residential Property with her child. The Landlord gave a *Notice of Termination by Lessor of Rental Agreement* (Form 4) dated January 6, 2023, effective March 6, 2023. The Tenant unsuccessfully disputed the eviction, but was given two extensions to the vacate date, eventually vacating around July 2, 2023.
- [16] The Landlord testified that when he took possession of the Residential Property he discovered garbage throughout the rental unit, the basement was flooded with two feet of water, the Residential Property had no insulation, and the furnace and hot water heater were destroyed. The Landlord testified that there was no sump pump in the basement, which allowed for serious water damage to occur due to flooding. Photographs submitted by the Landlord depict severe flooding in the basement of the Residential Property, and other damage and uncleanness throughout the Residential Property. The Landlord testified that the Residential Property cannot currently be heated and that it was in no condition for K.P. and her child to occupy.

- [17] K.P. testified that she intended to move herself and her child into the Residential Property as she has been staying intermittently with her partner and the Landlord. K.P. testified that the condition of the Residential Property was found to be entirely unsuitable to live in. K.P. further testified that she may live there in the future if it can be adequately repaired.

Analysis

- [18] The Officer notes that subsection 65.(1) of the *Act* states:

Notice given in bad faith

A former tenant may make an application to the Director under section 75 to determine whether a landlord gave a notice of termination under sections 62, 63 or 64 in bad faith.

- [19] The Officer notes that in these types of applications, it is the Tenant's responsibility, or onus to prove, on a balance of probabilities, their claim. The Application is requesting a finding that the Landlord evicted the Tenant in bad faith, and, as a result, the Tenant would be entitled to compensation pursuant to subsection 65.(1) of the *Act*.
- [20] The Officer finds that the evidence and testimony of the parties establish that on January 6, 2023 the Landlord served the Tenants a *Notice of Termination by Lessor of Rental Agreement* (Form 4) effective March 6, 2023 for 'child use'. This reason for termination was pursuant to sub-subsection 15.(1)(a) of the Former Act. The Tenant unsuccessfully disputed the termination notice and vacated the tenancy around July 2, 2023.
- [21] The *Act* was proclaimed on April 8, 2023 and became the law governing residential tenancies on Prince Edward Island. The Officer finds that subsection 65.(1) of the *Act* *only* allows a former tenant to apply for such compensation if they were evicted under sections 62, 63 or 64 of the *Act* in bad faith. In this case, the Tenant was *not* evicted under any of the sections prescribed and that there are no transitional provisions in the *Act* to allow the Tenant to seek such compensation under the current set of facts established on the evidence.
- [22] Furthermore, the Officer refers to Order LR23-48, paragraph 17. where the Island Regulatory and Appeals Commission, with a similar set of facts, states:
17. *While the Landlord did serve a Form 4 back in October 2022 pursuant to subsection 8.(d)(3) of the Rental of Residential Property Act (the "old Act"), section 65 of the RTA does not provide any transitional provisions to permit claims for compensation under the RTA to apply to past evictions under the old Act. Accordingly, the Tenant's application for compensation for an alleged bad faith eviction is denied.*
- [23] The Officer finds that because the Tenant was not evicted under sections 62., 63., or 64. of the *Act*, but was evicted under the Former Act, the Tenant is not entitled to compensation under subsection 65.(1) of the *Act*, and therefore, the Application is denied.

Conclusion

- [24] The Application is denied.
- [25] **Order LD23-530 was served to the parties by e-mail on November 16, 2023.**

IT IS THEREFORE ORDERED THAT

A. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 16th 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.