

## Introduction

- [1] On November 9, 2023 the Landlords filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks vacant possession of the Rental Unit and an order for the Sheriff to put the Landlords in possession.
- [2] Attached to the Application was an *Eviction Notice* (Form 4(B)) dated September 8, 2023 for effect on November 8, 2023 (the "Notice") signed by the former owner/landlord of the Rental Unit. The Notice was served for possession of the Rental Unit by the Landlords, who were purchasers as of September 8, 2023.
- [3] On November 10, 2023 the Rental Office mailed and emailed the Landlords notice of a teleconference hearing scheduled for 1:00 p.m. on November 17, 2023 for determination of the Application (the "Notice of Hearing"). The Rental Office requested that the Landlords serve the Application and Notice of Hearing to the Tenant.
- [4] The Landlords and the Tenant submitted documentary evidence to the Rental Office. On November 15, 2023 the Rental Office emailed the evidence package to the parties.
- [5] On November 17, 2023 a teleconference hearing was held before the Officer. The Landlord participated in the hearing but the Tenant did not participate. The Rental Office telephoned the Tenant shortly after 1:00 p.m. but no contact was made with the Tenant. The Officer waited until 1:00 p.m. before proceeding with the hearing in the absence of the Tenant and the hearing concluded at 1:33 p.m.

## Issue to be Decided

- [6] Does the Tenant and all occupants have to vacate the Rental Unit pursuant to the Notice?

## Summary of the Evidence

- [7] The Landlord's evidence is summarized as follows. The former owner/landlord of the Rental Unit entered into a tenancy agreement with the Tenant. Rent in the amount of \$695.00 is due on the first day of the month and no security deposit was required.
- [8] The Rental Unit is a one-bedroom, one-bathroom apartment located in a building containing four rental units numbered 25A, 25B, 27A (Rental Unit) and 27B (collectively, the "Residential Property").
- [9] On September 8, 2023 the former owner/landlord of the Residential Property served the Tenant with the Notice.
- [10] On September 28, 2023 the Landlords completed a real estate transaction document before their lawyer titled *Owner Occupancy Declaration* (the "Declaration"). The Landlords provided the Rental Office with a copy of the Declaration, which formed part of the evidence package. The Landlords did not directly provide the Tenant with a copy of the Declaration. The Landlords did not complete an earlier affidavit.
- [11] On September 28, 2023 the Landlords also finalized the purchase of the Residential Property. The Landlords do not own any other real estate.
- [12] Upon viewing and purchasing the Residential Property, the Landlords planned to move into unit 27B, which is located above the Rental Unit. The Landlord's father will move into the Rental Unit (27A). The Landlord's mother-in-law and father-in-law plan on moving into units 25A and 25B in February 2024.

- [13] On September 29, 2023 the Landlord visited the Rental Unit and spoke with the Tenant. At that time the Landlord and the Tenant discussed the Notice.
- [14] In October 2023 the tenant of unit 27B vacated their unit.
- [15] On November 12, 2023 the Landlord and his 73-year-old father served the Tenant with the Application and the Notice of Hearing. The Landlord stated that the Tenant made disparaging and offensive comments at that time.
- [16] The Tenant submitted photographs into evidence denying service of the Notice. The Tenant did not file an application with the Rental Office disputing the Notice or participate in the teleconference hearing.

### Analysis

- [17] The Officer was satisfied by the Landlord's testimony at the hearing that the Tenant was in fact served with the Notice on September 8, 2023. However, for the reasons below the Officer finds that the Notice is invalid.

### Four-Unit Residential Property

- [18] The Landlords seek to evict the Tenant based upon subsection 63(1) of the Act, which states:

*A landlord of a residential property that contains **fewer than three rental units** who has entered into an agreement of purchase and sale of the residential property may, on behalf of the purchaser, give the tenant of a rental unit in the residential property a notice of termination if the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation by*

*(a) the purchaser;*

*(b) the purchaser's spouse;*

*(c) a child, parent or a dependent of the purchaser or the purchaser's spouse; or*

*(d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child, parent or dependent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the residential property or mobile home park in which the rental unit is located.*

[Emphasis added]

- [19] Residential property is defined in subsection 1(p) as follows:

*"residential property" means*

*(i) a building, a part of a building or a related group of buildings in which one or more rental units are located,*

*(ii) the parcel or parcels of land on which the building, related group of buildings or common areas are located,*

*(iii) the rental unit and common areas,*

*(iv) any other structure located on the parcel or parcels including, but not limited to, a mobile home, or*

(v) a mobile home park

- [20] The Landlord stated that the Rental Unit is located in a building containing four rental units. A landlord can only terminate a tenancy for occupation by purchasers or the purchasers' eligible family members if the residential property has one or two rental units. As the Residential Property in this case has four rental units, the Officer finds that the Tenant was not eligible for eviction pursuant to subsection 63(1). The Notice is invalid on this first basis alone.

**Person Seeking Possession of the Rental Unit**

- [21] The Notice states that the purchasers will be occupying the Rental Unit (27A). The Landlord's evidence at the hearing was that the Landlord's father would be occupying the Rental Unit and the Landlords would move into the upstairs unit (27B). The Officer notes that a minimum of four months' notice is required when a purchaser's eligible family member intends to move into a rental unit. The minimum notice period is reduced to two months when a purchaser wants possession of the rental unit (subsection 63(4)).
- [22] The Officer finds that the Notice was not properly completed and is therefore invalid on a second basis.

**Purchasers' Affidavit**

- [23] To terminate a tenancy for purchasers' occupation, a tenant must be provided with an affidavit stating that the purchasers or an eligible family member will move into the rental unit. Subsection 63(3) states:

*A notice of termination under subsection (1) or (2) is valid only if the tenant has been provided with a sworn affidavit certifying that the purchaser in good faith requires possession of the rental unit for a purpose set out in subsection (1) or (2).*

- [24] The Officer has reviewed the Declaration submitted into evidence by the Landlords. For the purpose of subsection 63(3), the Declaration should have included jurat wording beside the lawyer's signature. An example of a jurat is the following: "*DECLARED before me at Charlottetown, Queens County, in the Province of Prince Edward Island, this 28<sup>th</sup> day of September, 2023.*"
- [25] Even though a jurat was missing, the Officer finds that the Declaration meets the minimum requirements of a purchasers' affidavit (see subsection 1(c) and section 44 of the *Interpretation Act* RSPEI 1988, I-8.1, section 13 of the *Evidence Act* RSPEI 1988, E-11, and section 21 of the *Notaries and Commissioners Act* RSPEI 1988, N-3.3).
- [26] Although the Officer has found that the Declaration is an affidavit, it was not provided to the Tenant as required by subsection 63(3). An affidavit must be served to a tenant at or before the time a termination notice is served. Otherwise, the termination notice (Form 4(B)) is invalid at the time of service.
- [27] A tenant may only dispute a termination notice within one month of being served with the notice (see subsection 63(6)). A tenant will be impeded from deciding whether to dispute a termination notice without the information contained in a purchaser's affidavit.
- [28] The Notice was served on September 8, 2023, the Declaration was made on September 28, 2023 and the Declaration was only sent to the Tenant by the Rental Office on November 15, 2023 as part of the evidence package. As a result, the Notice is invalid on a third basis.

### Deeming Provisions

- [29] Subsection 63(7) states that a tenant is deemed to accept a termination notice served for purchasers' occupation if the tenant does not make an application. In this case, the Tenant did not file an application, namely a *Tenant Application to Determine Dispute (Form 2(A))*.
- [30] The Officer finds that the deeming provision does not apply in this case because: (1) it was not possible to terminate the Tenant's tenancy due to the number of rental units in the Residential Property; (2) the Notice was not properly completed; and (3) the Declaration was not properly served to the Tenant.
- [31] The Prince Edward Island Court of Appeal considered a similar issue regarding a deeming provision in the case *Darville v. MacRae Holdings Ltd. Ano.* 2003 PESCAD 13. This decision was made under the *Rental of Residential Property Act*, RSPEI 1988, R-13.1, the rental law that was in force until April 7, 2023, before the *Residential Tenancy Act* became the governing law.
- [32] Both rental laws have deeming provisions where a tenant does not file an application to dispute a termination notice. It appears to the Officer that the reasoning at the end of paragraph [12] of this appeal case also applies to the deeming provisions in the *Residential Tenancy Act*:

*"The Rental of Residential Property Act makes it clear (sections 12, 13, and 14) that a lessor cannot terminate a lease except for cause as set out in the Act. There appears to be a question about whether or not there was cause in this case. The Act on its face states subletting is allowed with the consent of the lessor, but that consent cannot be unreasonably withheld. On its face a blanket prohibition against subletting is questionable compliance with the requirement for "reasonable" withholding of consent. **While [the tenant] apparently did not file an application to set aside the notice, this cannot validate a notice that is in any event invalid.**"*

[Emphasis added]

- [33] The Officer finds that the deeming provision in subsection 63(7) cannot validate the invalid Notice.

### Conclusion

- [34] The Notice is invalid and the Application is denied.
- [35] At the hearing the Landlord stated that the Tenant made disparaging and offensive comments. The Officer notes that a different type of termination notice (Form 4(A)) or remedy (earlier termination) would need to be sought in order to determine this other issue.

### IT IS THEREFORE ORDERED THAT

1. The Notice is invalid and the Application is denied.

**DATED** at Charlottetown, Prince Edward Island, this 24th day of November, 2023.

(sgd.) Andrew Cudmore

Andrew Cudmore  
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.