

Introduction

- [1] On October 13, 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 4, 2023, effective November 4, 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 has caused damage to the rental unit.*

- [3] On November 21, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a Tenant witness, and a Landlord Representative participated.
- [4] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the Act.

Issue to be Decided

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

Summary of the Evidence

- [5] In June 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 multi-unit building. Rent is \$664.58 per month due on the first day of the month. A security deposit was not required.

Landlord's Evidence and Submissions

- [6] The Representative submitted several pages of evidence including a copy of the tenancy agreement along with a video and photographs of the Residential Property.
- [7] The Representative stated the Tenant has been repeatedly late paying rent since June 1, 2022. She stated the Tenant was served a notice in May 2022 that his rent was going to be increased 3.0% beginning June 1, 2022. The Representative stated this would equal \$6.13 per month. She stated the Tenant has never paid the rent increase since being served the notice and the Tenant owes 17 months of the rent increase totaling \$104.21.
- [8] The Representative stated the Residential Property is in poor condition. She stated the Landlord purchased the building three years ago and the Tenant's rental unit is in the worst shape. The Representative performed an inspection in February 2023 and again in November 2023. The Representative stated the condition of the rental unit did not improve. She stated the video and photographs in evidence show the condition of the rental unit. The Representative stated the Landlord has repaired the sink pipe but the sink is again backing up due to the Tenant's actions.

Tenant's Evidence and Submissions

- [9] The Tenant stated he has been living in the Residential Property for approximately 15 years. He stated the previous landlords did not make any repairs to the rental unit. He stated the floors were installed 15 years ago and they were not installed properly. He stated he has asked the Landlord to make repairs and nothing has been fixed except for the sink pipe. The Tenant stated his shower does not work and he has to shower at the Witnesses' residence. The Witness confirmed the Tenant showers at his residence.
- [10] The Tenant stated that social assistance pays his rent. He stated if the Landlord contacted social assistance then they would pay the rent increase the Landlord is requesting.

Analysis

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

- [11] 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) and (f) 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;

(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.

- [12] The Officer makes comment that in such matters where there is a dispute over a Notice of Termination by Landlord, 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 finds that the Landlord has not provided sufficient evidence to establish that the Tenant has breached subsections 61.(1)(b) or (f) of the *Act*.
- [13] With regards to subsection 61.1(b) of the *Act*, the Representative testified the Tenant has not paid a 3.0% rent increase since being served a notice of the increase in May 2022.
- [14] Subsections 47.(1) and (2) of *Part 3* the *Act* state:
- (1) A landlord shall not increase rent except in accordance with this Part.*
- (2) The obligations of a landlord under this Part run with the rental unit and not the tenant.*
- [15] Subsections 49.(1), and (4) of the *Act* state:
- (1) No landlord shall increase the rent charged for a rental unit by more than the allowable annual increase, except in accordance with section 50.*
- (4) Notwithstanding subsections (2) and (3), the guideline for the 2023 calendar year is zero per cent.*

[16] Subsection 50.(1) of the *Act* states:

(1) A landlord may request the Director's approval of a rent increase in an amount that is greater than the amount calculated under subsection 49(2) by making an application to the Director under section 75.

[17] The Officer notes that there was no evidence submitted that the Landlord had applied for a “*more than the allowable rent increase*” for the Residential Property. Furthermore, the allowable rent increase for 2022 was 1.0%, as stated in the Island Regulatory and Appeals Commission Order LR21-29 and for 2023 it was 0.0% as stated in the *Act*.

[18] The Officer therefore finds that the Landlord has not complied with *Part 3* of the *Act* and the rent increase is not valid. The Officer also finds that this is not a valid ground for eviction and this part of the Notice is not valid. The rent for the Residential Property will be \$664.58 per month until the rent is properly increased in accordance with the *Act*.

[19] With regards to subsection 61.(1)(f) of the *Act*, the Landlord testified as to the condition of the rental unit and also submitted photographs and a video of the rental unit. The Tenant stated no repairs have been completed to the rental unit in several years. Based on the evidence submitted, the Officer does not find that the Landlord has provided sufficient evidence to establish that the Tenant or a person permitted on the Residential Property by the Tenant has caused unreasonable damage to the rental unit or the Residential Property.

[20] The Officer finds that the Landlord has not established that the Tenant has breached subsections 61.(1)(b) and (f) of the *Act*. Further, the Officer finds that the authorized rent for the Residential Property is \$664.58 per month until the rent is properly increased in accordance with the *Act*.

Conclusion

[21] The Notice is not valid and the Application is allowed.

[22] The tenancy agreement between the parties shall continue in full force and effect.

[23] The authorized rent for the Residential Property is \$664.58 per month until the rent is properly increased in accordance with the *Act*.

IT IS THEREFORE ORDERED THAT

A. The tenancy agreement between the parties shall continue in full force and effect.

B. The authorized rent for the Residential Property is \$664.58 per month until the rent is properly increased in accordance with the *Act*.

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

(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.