

Introduction

- [1] On October 16, 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 seeking:

To request a determination that my landlord contravened my right to quiet enjoyment, entered the rental unit unlawfully, prohibited and/or restricted access to the rental unit, changed the locks or failed to secure the rental unit, failed to repair or maintain the rental unit, or any other material term of the tenancy agreement.

Other: Request return of rent.

- [2] On November 9, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and the Tenant participated.
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.

Issues to be Decided

- i. Did the Landlord contravene the Tenant's right to quiet enjoyment or a material term of the tenancy agreement?
- ii. Is the Tenant entitled to compensation?

Summary of the Evidence

- [4] In December of 2022 the Landlord and the Tenant entered into a verbal month-to-month tenancy agreement for the Residential Property. The Residential Property is a rental unit situated in a multi-unit building. Rent is \$900.00 due on the first day of the month. A security deposit of \$1,000.00 was paid.

Tenant's Evidence and Submissions

- [5] The Tenant submitted one page of documentary evidence which was a copy of a receipt for a towing company, which was paid on October 16, 2023. The Tenant stated he is seeking compensation for the tow bill in the amount of \$308.20. He stated the Landlord had the Tenant's trailer towed from the parking lot of the Residential Property around October 12, 2023.
- [6] The Tenant stated the Landlord has been annoyed as the Tenant is using one of the building's parking spots for parking his trailer. The Tenant stated after he moved in the Landlord told the Tenant he could use two parking spots, so he uses one for his vehicle and one for his trailer. The Tenant stated he uses the trailer to store items which he sells to the public.
- [7] The Tenant stated he did not see the Landlord's notice on his door to remove the trailer before it was towed. The Tenant stated the notice was posted on his front door which he does not use very often. The Tenant stated he was also away during that time the notice was posted.
- [8] The Tenant stated the Landlord has been trying to evict the Tenant, but a recent Rental Office hearing did not evict the Tenant. He stated the trailer is presently stored off the property for the winter.

Landlord's Evidence and Submissions

- [9] The Landlord submitted several pages of documentary evidence which included photographs of the Tenant's trailers parked in the parking lot of the Residential Property as well as a written submission from a Landlord employee.
- [10] The Landlord confirmed that he had the Tenant's trailer towed. The Landlord stated he told the Tenant he could use an extra parking spot for an individual the Tenant often has come and visit. The Landlord stated he repeatedly told the Tenant the extra parking spot was not for parking his trailers. The Landlord stated he has warned the Tenant several times about not parking his trailers in the parking lot.
- [11] The Landlord stated he has verbally warned the Tenant and served the Tenant several written notices. The Landlord stated having the trailer in the parking lot does not look good and the parking lot is only for vehicles. He stated the Tenant sells items from his trailer and this causes extra traffic in the parking lot. The Landlord referenced the photographs of the Tenant's trailers parked in the parking lot of the Residential Property.
- [12] The Landlord submitted a written statement from a Landlord employee. The employee stated he was with the Landlord on two separate occasions when the Landlord provided the Tenant with written notice to move his trailers from the parking lot. The employee stated the Tenant ignored the notices. The employee stated he has also observed the Landlord provide the Tenant verbal notice not to park his trailers in the parking lot. The employee stated the Landlord never gave permission to the Tenant to park his trailers in the parking lot.

Analysis**Issue i: Did the Landlord contravene the Tenant's right to quiet enjoyment or a material term of the tenancy agreement?**

- [13] The Officer begins by referencing the relevant law for the Application. Subsections 21.(1) and 22.(b) of the *Act* state:

21. Terminating or restricting services for facilities

(1) A landlord shall not terminate or restrict a service or facility if

(a) the service or facility is reasonably related to the tenant's use and enjoyment of the rental unit as living accommodation; or

(b) the service or facility is a term of the tenancy agreement.

22. Tenant's right to quiet enjoyment

A tenant is entitled to quiet enjoyment of the rental unit including, but not limited to, the right to

(b) freedom from unreasonable disturbance.

- [14] The Application is seeking compensation for alleged breaches of the *Act*. In such applications, it is the person alleging the breaches, in this case, the Tenant's burden or onus to prove, on a balance of probabilities, any all claims made in the Application. In this case, the Officer finds that the Tenant has not established that the Landlord has contravened subsections 21.(1) or 22.(b) of the *Act*.

- [15] The parties had conflicting testimony as to whether the Landlord had given the Tenant permission to park his trailers in the parking lot of the Residential Property. However, the parties agreed the Landlord has provided the Tenant several written and verbal notices not to park his trailers in the parking lot. Furthermore, the Landlord provided a written statement from a Landlord employee who stated the Landlord did not give the Tenant permission to park his trailers in the parking lot.
- [16] The Officer finds the Tenant has not established, on a balance of probabilities, that an extra parking spot is “*a service or facility is reasonably related to the tenant’s use and enjoyment of the rental unit as living accommodation*” or that an extra parking spot is a “*service or facility included in a term of the tenancy agreement.*”
- [17] The Officer further finds that the Landlord has not breached the Tenant’s right to “*quiet enjoyment*” or the Tenant’s “*freedom from unreasonable disturbance*” by having the Tenant’s trailer towed from the Residential Property. The Officer notes that the Landlord has given the Tenant both verbal and written notices not to park his trailers in the parking lot, which the Tenant has ignored.

Issue ii: Is the Tenant entitled to compensation?

- [18] As the Officer has already found that the Tenant has not established that the Landlord has contravened subsections 21.(1) or 22.(b) of the *Act*, the Officer finds that the Tenant is not entitled to compensation.

Conclusion

- [19] The Application is denied.
- [20] Order LD23-555 was served on the parties by email on November 28, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 28th 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.