

Introduction

- [1] On November 14, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application is disputing an eviction notice pursuant to subsection 62.(4) of the *Act*.
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the “First Notice”) dated August 22, 2023 effective August 22, 2023. The First Notice was given to the Tenant for the following reason:
- I want possession of the rental unit for myself.*
- [3] Attached with the Application was another *Eviction Notice* (Form 4(A)) (the “Second Notice”) dated November 13, 2023 effective December 13, 2023. The Second Notice was given to the Tenant for the following reason:
- I want possession of the rental unit for myself.*
- [4] The parties dispute whether the Tenant was properly served with the First Notice. The Landlord served the Second Notice on the Tenant by hand delivery on November 13, 2023, in accordance with subsection 100.(1) of the *Act*. The Tenant served the Application on the Landlord by mail on November 14, 2023, in accordance with subsection 100.(1) of the *Act*.
- [5] On November 28, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant and the Landlord participated in the hearing.

Issues to be Decided

- i. Did the Landlord serve the Tenant with the First Notice?
- ii. Does the Tenant have to vacate the Residential Property due to the Second Notice?

Summary of the Evidence

- [6] In November 2017, the Landlord and the Tenant entered into a verbal month-to-month tenancy agreement for the Residential Property. The Residential Property is one unit of a triplex. Rent is \$895.00 due on the first day of the month.

Landlord’s Evidence and Submissions

- [7] The Landlord submitted one page of documentary evidence, consisting of one page of written arguments.
- [8] The Landlord indicated on both the First Notice and Second Notice that he was seeking to evict the Tenant for personal occupation. However, the Landlord testified that he was seeking to evict the Tenant in order to move his father-in-law into the Residential Property.
- [9] The Landlord testified that he planned to have his father-in-law move into the Residential Property because his father-in-law’s rent had recently increased by \$300.00. The Landlord also testified that he would be increasing rent for his father-in-law from \$895.00 to \$1,200.00 and discontinuing services provided by the Landlord under the tenancy agreement. The Landlord’s father-in-law did not participate in the hearing and the Landlord did not provide any documentary evidence regarding his father-in-law’s intention to occupy the Residential Property.

- [10] The Landlord testified that the Tenant came to his residence on August 22, 2023. The Landlord testified that he had the First Notice with him as well as a rent increase form. The Landlord testified that he attempted to give the Tenant the First Notice, but she refused. He added that he repeatedly told the Tenant that “it was in her best interests” to take the First Notice. The Landlord also testified that he then filled out the rent increase form in front of the Tenant. The Landlord denied requiring the Tenant to sign the First Notice or rent increase form.
- [11] The Landlord originally testified that if the Tenant had accepted the rent increase he would have allowed her to stay, but because she refused it, he decided to evict her. Later in the hearing, the Landlord testified that he always was planning to evict the Tenant and only had the rent increase form to show her that his expenses had gone up.
- [12] The Landlord testified that on November 13, 2023, he gave the Second Notice to the Tenant, but only as a reminder, and that he was not starting the eviction timeline over again. The Landlord also argued that he had texted the First Notice and the Second Notice to the Tenant. The Landlord did not submit any copies of text message exchanges with the Tenant.
- [13] The Landlord also made submissions arguing that he is entitled to raise rent from \$895.00 to \$1,000.00 because he had not increased rent for numerous prior years.

Tenant’s Evidence and Submissions

- [14] The Tenant submitted 7 pages of documentary evidence, including written arguments and copies of text message exchanges between the Tenant and the Landlord.
- [15] The Tenant argued that the Landlord is seeking an eviction in bad faith as a result of the Tenant refusing to accept an illegal rent increase by the Landlord from \$895.00 per month to \$1,000.00 per month.
- [16] In a series of undated text messages, the Tenant stated to the Landlord that she spoke with the Island Regulatory and Appeals Commission and confirmed that rent could only be raised by the allowable amount of 3% in 2024. The Tenant then stated that this would result in her rent being raised up to \$921.85, and not \$1,000.00. The Landlord responded 24 minutes later stating “Your evictions notice will be immediately. Start looking for a new place.” The Landlord then added “Addiction notice was served four months ago. I have a family member moving into that place. You have 30 days.”
- [17] The Tenant stated that she never received the First Notice from the Landlord. The Tenant testified that she attended the Landlord’s residence to obtain the First Notice on August 22, 2023. The Tenant referenced a text message conversation between the parties. On August 21, 2023, the Landlord texted the following messages to the Tenant “Dotty please stop in the morning”, “I have an addiction notice for you to sign”, “Evictions notice please stop back.” On August 22, 2023, the Tenant replied “Good morning just got your text will 9 be ok to come up”. To which the Landlord responded, “Yes please.”
- [18] The Tenant testified that when she arrived, the Landlord had with him the First Notice and a rent increase form. The Tenant testified that the Landlord told her that she had to sign the rent increase form, which she refused. The Tenant testified that the Landlord then told her that she had to sign the First Notice before he would give it to her, which the Tenant also refused. The Tenant believed that signing either form would provide her consent to the rent increase and/or eviction. The Tenant testified that she was never given the opportunity to review the First Notice and that she left without it.

- [19] The Tenant testified that on November 13, 2023, she received the Second Notice by hand delivery. The Tenant submitted that at this point the Tenant told the Landlord that she would agree to pay rent in the amount of \$1,000.00 per month, as requested by the Landlord. However, the Landlord responded with "No, I have had enough." The Tenant filed her Application to dispute the eviction the next day.
- [20] The Tenant denied that she received the First Notice or Second Notice by text message. The Tenant testified that she cannot receive picture text messages on her cell phone. The Tenant submitted photographs of her text message conversation with the Landlord on her phone to show that she could not receive photographs.

Analysis

- [21] The Landlord's reasons for terminating the tenancy agreement are pursuant to subsections 62.(1), (2), (3), (4), and (5) of the Act, which state:

62. Landlord's notice for landlord's use of property

- (1) *A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by*
- (a) *the landlord;*
 - (c) *a child, parent or a dependent of the landlord or the landlord's spouse.*

Period of notice

- (2) *The date for termination specified in the notice of termination shall be at least four months after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.*

Form of notice

- (3) *In giving a notice of termination under this section, a landlord shall comply with the requirements of section 53.*

Tenant may dispute notice

- (4) *A tenant may dispute a notice of termination given under subsection (1) by making an application to the Director under section 75 within one month after the date the tenant receives the notice.*

Tenant presumed to accept notice

- (5) *Where a tenant who has received a notice of termination under this section does not make an application to the Director in accordance with subsection (4), the tenant*
- (a) *is deemed to have accepted that the tenancy ends on the effective date of the notice of termination; and*
 - (b) *shall vacate the rental unit by that date.*

- [22] The Officer further notes the application of subsections 53.(e) and 100.(1) of the Act.

53. Form and content of notice of termination

In order to be effective, a notice of termination shall be in writing and shall

- (e) *be given to the other party in accordance with section 100.*

100. Service of documents

- (1) *A document that is required or permitted under this Act to be given to or served on a person shall be given or served in one of the following ways:*
- (a) *giving the document personally to the other party;*
 - (b) *if the person is a landlord, by leaving a copy with an agent of the landlord;*

- (c) *sending the document by registered mail or ordinary mail to the other party at an address provided by the other party;*
- (d) *sending the document electronically where*
 - (i) *it is provided in the same or substantially the same form as the printed document;*
 - (ii) *the other party has provided an electronic address for receipt of documents, and*
 - (iii) *it is sent to that electronic address;*
- (e) *where the other party is a corporation, by giving a copy of the document personally to a director, manager or other officer of the corporation or by leaving it at, or sending it to, the registered office of the corporation by a method set out in clause (c) or (d);*
- (f) *posting the document in a conspicuous place on the entrance of the rental unit;*
- (g) *by any other means of service prescribed in the regulations.*

Issue i: Did the Landlord serve the Tenant with the First Notice?

- [23] The Officer finds that based on the documentary evidence presented and the testimony of the Tenant, the Landlord did not serve the First Notice on the Tenant because the Tenant refused to “sign” it. The Officer notes that the Tenant testified that she had originally been willing to accept the First Notice and attended the Landlord’s residence to do so. The Officer notes the text message exchange between the Landlord and Tenant over the course of August 21, 2023 and August 22, 2023, in which the Landlord requested that the Tenant pick up the First Notice, and the Tenant advised that she would be by the Landlord’s residence at 9:00am on August 22, 2023. The Officer finds that the evidence suggests that the Tenant attended the Landlord’s residence with the intention to accept the First Notice.
- [24] The Officer notes that the Landlord and Tenant dispute as to why the Tenant was not provided with the First Notice. The Officer finds that the Tenant’s testimony was clear and consistent throughout the hearing that the Landlord would not provide the First Notice to the Tenant unless she immediately agreed to sign it. The Officer finds that the Landlord’s testimony was disjointed and contradictory specifically with respect to this interaction with the Tenant.
- [25] The Officer finds that the Landlord withheld the First Notice from the Tenant because the Tenant would not sign it. The Officer finds that there was no basis under the *Act* for the Landlord to require the Tenant to sign the First Notice. The Officer further notes that nowhere on the standard Form 4(B) Eviction Notice is there a place for tenants to sign.
- [26] The Officer finds that the Tenant concluded that signing the First Notice would be giving consent to the eviction. The Officer finds that it was reasonable for the Tenant to refuse to sign the First Notice. Therefore, the Officer finds that the Landlord failed to serve the Tenant with the First Notice as required under subsection 53.(e) of the *Act*. The Officer finds that as the First Notice was invalid, the Tenant is not deemed to have accepted the end of the tenancy under subsection 62.(5) of the *Act*.
- [27] The Officer finds that service was only achieved when the Second Notice was served by hand delivery to the Tenant on November 13, 2023. The Officer notes that the Tenant filed her Application to set aside the eviction the next day, allowing the matter to be heard on its merits.

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

- [28] The Officer notes that in this matter where there is a dispute over the Second Notice, it is the Landlord’s burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Second Notice.

- [29] The Officer notes that while the First and Second Notice list the cause for eviction as being for his own personal occupation of the Residential Property, the Landlord testified that he is seeking to evict the Tenant so that his father-in-law could occupy the Residential Property. The Officer notes that the Landlord's father-in-law did not present testimony as a witness in the hearing and the Landlord did not present any documentary evidence to support the claim that his father-in-law would move into the Residential Property.
- [30] The Officer further notes the testimony of the parties regarding the Landlord's possession of a rent increase form on August 22, 2023. The Officer finds that the evidence suggests that the Landlord said, or strongly implied, that if the Tenant did not accept the rent increase, he would evict her. The Officer finds that the Landlord's explanation for why he had a rent increase form with him on that day is contradictory and suggestive of an eviction in bad faith.
- [31] The Officer finds that based on the evidence, the Landlord has failed to establish valid grounds to terminate the tenancy agreement pursuant to sub-subsections 62.(1)(a) or (c) of the Act. The First Notice and the Second Notice are invalid and the Application is allowed.

Conclusion

- [32] The First Notice and the Second Notice are invalid and the Application is allowed.
- [33] The tenancy agreement shall continue in full force and effect.
- [34] **Order LD23-564 will be served on the parties by ordinary mail on December 1, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 1st day of December, 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.