

Introduction

- [1] On November 6, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office") disputing a notice.
- [2] Attached to the Application was an *Eviction Notice* (Form 4(B)) (the "Notice") dated October 10, 2023, with a vacate date of December 31, 2023. The Notice was served to the Tenant for the following reason:

A buyer wants possession of the rental unit for (affidavit required): buyer Building to made into condominiums + sold.

- [3] On November 6, 2023 the Tenant served the Landlord with a copy of the Application.
- [4] On November 17, 2023 the Rental Office mailed and emailed the parties notice of a hearing scheduled for 1:00 p.m. on November 30, 2023.
- [5] On November 28, 2023 the Rental Office emailed the evidence package to the parties.
- [6] At 1:00 p.m. on November 30, 2023 a teleconference hearing was held before the Officer for determination of the Application. Neither party called into the teleconference hearing at the scheduled time. The Rental Office contacted the Tenant, who then joined the teleconference hearing. The Rental Office also contacted the Landlord and was advised that he would not participate in the hearing. The hearing proceeded in the absence of the Landlord and concluded at 1:48 p.m. The Landlord did not submit documentary evidence prior to the hearing.

Issue to be Decided

- i. Do the Tenant and all occupants have to vacate the Rental Unit pursuant to the Notice?

Summary of the Evidence

- [7] The Tenant's evidence is summarized as follows. The Landlord and the Tenant entered into a written, month-to-month tenancy agreement dated June 19, 2021 that commenced on July 1, 2021. Rent in the amount of \$1,000.00 is due on the first day of the month and a security deposit of \$500.00 was paid.
- [8] The Rental Unit has two-bedrooms and one bathroom. This unit is located in a building containing six rental units, with a laundry room located in the middle (the "Residential Property"). Unit 2 of the Residential Property has been fixed up and is currently vacant. Unit 4 is in the process of being fixed up. The three other units are occupied.
- [9] On October 10, 2023 the Landlord taped the Notice to the door of the Rental Unit. The Tenant saw handwriting on the Notice stating "*Building to made into condominiums + sold.*"
- [10] The Tenant did not receive an affidavit or another document stating that a specific person intended to move into the Rental Unit.
- [11] The Tenant continues to live in the Rental Unit and wants to remain in the unit.
- [12] The Tenant provided evidence regarding an incident on December 11, 2021 where the Landlord accessed the Rental Unit.

Analysis

[13] On the Notice there is handwriting that states “*Building to made into condominiums + sold.*” Based upon this writing, it appears that the Residential Property was not converted into condominiums at the time the Notice was served.

[14] Therefore, it appears that the Landlord sought to terminate the tenancy pursuant to 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]

[15] The evidence establishes that the Residential Property has six rental units. Therefore, the Tenant could not be evicted pursuant to subsection 63(1), which is limited to one or two-unit residential properties.

[16] A landlord must establish that a specific purchaser had a genuine intention to occupy the Rental Unit in order to prove “good faith.” In this case there is no such evidence. In fact, the handwriting on the Notice indicates that the Rental Unit will be sold in the future and a specific purchaser does not exist at this time.

[17] To terminate a tenancy for purchaser’s occupation, a tenant must be provided with an affidavit stating that the purchaser 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).

[18] An affidavit must be served at or before the time a termination notice is served.

[19] The Tenant’s undisputed evidence establishes that the Landlord did not provide an affidavit to the Tenant as of the hearing date.

[20] In summary, the Officer finds that the Notice is invalid for three reasons: (1) the Residential Property contains six units; (2) “good faith” has not been established; and (3) the Tenant was not served with a purchaser’s affidavit.

Conclusion

- [21] The Notice is invalid and the Application is allowed. The tenancy between the parties will continue in full force and effect.
- [22] The Officer notes that a landlord should make sure all requirements have been fulfilled before deciding to serve a termination notice for purchaser's occupation of a rental unit. Pursuant to section 65 of the *Act*, a landlord can face serious consequences if a former tenant makes an application to the Rental Office and a bad faith eviction is established.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid and the Application is allowed.
2. The tenancy between the parties will continue in full force and effect.

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