

Introduction

- [1] On November 27, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office") disputing an eviction notice.
- [2] Attached to the Application was an *Eviction Notice* (Form 4(B)) (the "Notice") dated November 14, 2023, with a vacate date of May 15, 2024. The Notice was served to the Tenant for the following reason:

I want possession of the rental unit for: myself.

- [3] On November 28, 2023 the Rental Office emailed the parties notice of a hearing scheduled for 1:00 p.m. on December 12, 2023.
- [4] On December 6, 2023 the Rental Office emailed an evidence package to the parties.
- [5] On December 12, 2023 a Zoom/teleconference hearing was held before the Residential Tenancy Officer (the "Officer") for determination of the Application.

Issue to be Decided

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

Summary of the Evidence

- [6] The parties entered into an oral tenancy agreement that commenced on July 1, 2012. Rent in the amount of \$1,479.00 is due on the first day of the month and a security deposit was not required.
- [7] The Rental Unit is a three-bedroom, one-and-a-half-bathroom unit located on the ground floor of a four-unit building (the "Residential Property").

Landlord's Evidence

- [8] The Landlord's evidence is summarized as follows. A number of family members have lived in the Rental Unit since the 1920s, when the Residential Property was built by the Landlord's grandfather. The Landlord's mother passed away in December of 2011 (the "Deceased") and the Residential Property is currently owned by the Deceased's estate (the "Estate"). It was the Deceased request that the Landlord would become the owner of the Residential Property. The Landlord intends on becoming the registered owner of the Residential Property in 2024.
- [9] The Landlord currently lives in another apartment of the Residential Property, on the third floor. This apartment is much smaller than the Rental Unit and is more difficult to access. The Landlord's husband has difficulty climbing stairs and he suffers from dizziness. The Landlord submitted into evidence a letter from her husband's doctor.
- [10] When C.C. arranged the oral tenancy agreement with the Tenant in 2012 he expected that the Tenant would live in the Rental Unit for a long time. The Tenant has lived in the Rental Unit for almost 12 years, which C.C. considers a long time. The Landlord's position is that the tenancy is currently a month-to-month agreement.
- [11] The Landlord is willing to extend the termination date from May 15 to May 31, 2024 but not to the Tenant's requested date, below, of October 31, 2024.

Tenant's Evidence

- [12] The Tenant's evidence is summarized as follows. The Landlord is not currently the sole owner of the Residential Property.
- [13] In July of 2012 the Tenant dealt with C.C. when the oral tenancy agreement was made. There was no discussion that the tenancy would last for a specific period of time. C.C. told the Tenant that he did not need a written lease if the Tenant did not require a written lease. The Tenant understood this to mean that the Tenant could continue to stay in the Rental Unit so long as he followed the rules.
- [14] The Tenant provided evidence regarding improvements that have been made to the Rental Unit at the Tenant's expense.
- [15] The Tenant understands "good faith" to mean honesty, fairness and this term entails trust and sincerity. On November 7, 2023 the Tenant was served with a rent increase notice signed by the Landlord, and the two witnesses that attended the hearing. Seven days later the Tenant received the Notice, which was only signed by the Landlord. The Tenant was surprised to have received the Notice after an eleven-year cordial relationship.
- [16] The Tenant's wife has serious mobility issues and the Rental Unit is located on the ground floor of the Residential Property in a convenient location.
- [17] The Tenant has not found a place to move. The Tenant seeks a vacate date of October 31, 2024 or, alternatively, compensation.

Analysis

Is the Landlord a "landlord?"

- [18] The Landlord seeks to end the tenancy with the Tenant pursuant to subsections 62(1) and (2) of the Act, which state:

*(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;

(b) the landlord's spouse;

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

(d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child, parent or dependent of the landlord or the landlord'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.

(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.

[Emphasis added]

- [19] The first issue in this case is whether the Landlord is considered a "landlord" under the Act. This term is defined in subsection 1(h) as follows:

"landlord", in relation to a rental unit, includes

- (i) *the owner of the rental unit, the owner's agent or another person who, on behalf of the owner,*
 - (A) *permits occupation of the rental unit under a tenancy agreement, or*
 - (B) *exercises powers and performs duties under this Act or a tenancy agreement,*
- (ii) *the heirs, assigns, personal representatives and successors in title to the owner,*
- (iii) *a person, other than a tenant occupying the rental unit, who*
 - (A) *is entitled to possession of the rental unit, and*
 - (B) *exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit, and*
- (iv) *a former landlord, as the context requires;*

- [20] The evidence presented indicates that the Residential Property is in the name of the Estate. Ideally the Landlord would have submitted into evidence registry documents showing the nature of the ownership of the Residential Property and estate documents showing the relationship between the Estate and the Landlord.
- [21] However, the Landlord and her witnesses testified that the Residential Property is in the name of the Estate and the Landlord is the intended recipient of the Residential Property from the Estate. Therefore, based upon the evidence presented, it appears that the Landlord is considered a "landlord," as defined in the *Residential Tenancy Act*, because she is an heir of the Deceased with regard to the Residential Property.
- [22] Alternatively, the Landlord may also be considered an owner of the Residential Property for the purposes of the *Residential Tenancy Act*. Generally speaking, where an estate exists the legal ownership or property is in the name of the estate or the personal representative (executor or administrator). However, the beneficial property interest belongs to the beneficiary who is the intended recipient of the property. This separation of legal and beneficial ownership occurs when property is held in trust.
- [23] By having a beneficial interest in a property a person may also be considered an owner under the *Residential Tenancy Act*. As the Officer has already determined that the Landlord qualifies as a "landlord" by being an heir, it is unnecessary for the Officer to also determine this second basis.

Oral Tenancy Agreement

- [24] The evidence of the parties establishes that in 2012 there was an oral tenancy agreement and no written agreement. The Tenant's evidence is that, because a written agreement was not required, he inferred he could stay in the Rental Unit so long as he followed the rules. C.C.'s evidence is that the Tenant was expected to stay in the Rental Unit for a long time. It appears to the Officer that the parties had different intentions regarding the original tenancy agreement.
- [25] The Officer notes that under the former residential tenancy legislation on Prince Edward Island, the *Rental of Residential Property Act* RSPEI 1988, R-13.1 (the "*RRPA*"), there was no requirement for written tenancy agreements. The *RRPA* was in force in 2012 at the time the tenancy was established. While the *RRPA* was in force it was common for tenancy agreements to be oral agreements. The fact that a tenancy agreement is an oral agreement does not mean that a landlord has relinquished the ability to terminate the tenancy for occupation of the rental unit by the landlord.
- [26] Instead, subsection 9(3) of the *RRPA* stated:

A lessor [landlord] and lessee [tenant] who have an oral rental agreement and do not sign a standard form are deemed to have done so and all the provisions of this Act and the standard form apply.

- [27] The standard form prescribed by the *Rental of Residential Property Act Regulations*, EC10/89, as amended, specifically incorporates section 15 of the *RRPA*, which allows a landlord to terminate a rental agreement for occupation by a landlord.
- [28] In this case the evidence does not establish an agreement between the parties that would prohibit the Landlord from serving a termination notice for the Landlord's occupation of the Rental Unit.
- [29] The Officer notes that since April 8, 2023, when the *Residential Tenancy Act* came into force, landlords have been required to prepare written tenancy agreements (see subsection 11(1)).

Good Faith

- [30] During the hearing the Tenant provided evidence regarding his understanding of the term "good faith." The Officer notes that in the context of section 62 of the *Act*, the term "good faith" has a very specific meaning. Namely, whether the Landlord has a genuine intention to in fact reside in the Rental Unit.
- [31] Section 62 of the *Act* is similar to section 48 of Ontario's *Residential Tenancies Act*, S.O. 2006, C. 17.
- [32] In the Ontario Supreme Court decision, *Fava v. Harrison*, 2014 ONSC 3352, the Court considered what is meant by "good faith" in the context of a termination notice for landlord's occupation. The following is stated at paragraph [17] of this decision:

*"We accept, as reflected in Salter, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is **whether the landlord has a genuine intent to reside in the property**. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property."*

[Emphasis added]

- [33] The Officer notes that this interpretation of "good faith" is the same as the interpretation of section 15 of the *RRPA*, which also addressed occupation of a rental unit by a landlord (see Island Regulatory and Appeals Commission Orders LR19-09, LR19-16 and LR21-50).
- [34] On April 8, 2023, when the residential tenancy legislation changed from the *RRPA* to the *Residential Tenancy Act*, the law regarding landlord's occupation of a rental unit continued to be similar to Ontario's legislation. As a result, it appears to the Officer that "good faith" still means whether the landlord has a genuine intention to reside in a rental unit.
- [35] The Landlord has provided a reasonable explanation why she and her husband intend on moving into the Rental Unit. The location of the Rental Unit on the ground floor would accommodate the health issues faced by the Landlord's husband. Based upon the evidence presented, it appears that the Landlord has a genuine intention to move into the Rental Unit and, therefore, the Landlord has met the good faith requirement.
- [36] As a result, the Officer finds that the Notice is valid.
- [37] The Officer notes that there is a duty for the Landlord to continue acting in good faith after the Notice is served (see paragraph [47] of the case *Elkins v. Van Wissen*, 2023 ONCA 789). The termination date in the Notice is almost six months from the date of the Officer's decision and it is possible that circumstances could change during this period. The Officer finds that the Landlord must immediately advise the Tenant and the Rental Office if circumstances change and the Landlord no longer intends to reside in the Rental Unit.

- [38] Pursuant to section 65 of the *Act*, a landlord can face serious consequences if a tenant moves out of a rental unit, the former tenant makes an application to the Rental Office and a bad faith eviction is established.

Termination Date of the Notice

- [39] It is generally more difficult for tenants to find alternative housing during the middle of the month compared to the end of the month. At the hearing the Landlord stated that she is agreeable to the termination date being extended to May 31, 2024. As a result, the Officer extends the termination date from May 15, 2024 to May 31, 2024 pursuant to clause 85(1)(n) of the *Act*.
- [40] The Tenant provided testimony and documentary evidence regarding the challenges involved with moving. It is clear that the end of the tenancy will be a disruptive and difficult time for the Tenant and his family.
- [41] The evidence establishes that there are also health challenges faced by the Landlord's husband, who intends to move into the Rental Unit with the Landlord.
- [42] In this case the minimum termination date in the Notice would have been March 31, 2024 (four full months after November 14, 2023). The effective date is now May 31, 2024, which is six full months after the date of service. The Officer will not further extend the termination date in this case as there are also urgent reasons that the Landlord and her husband need to move into the Rental Unit.

Conclusion

- [43] The Notice is valid and the Application is denied.
- [44] The Tenant and all occupants must vacate the Rental Unit by 5:00 p.m. on May 31, 2024.
- [45] The Officer notes that the enforcement wording contained in the "Ordered" section below is the standard wording used where a tenant must move out of a rental unit.
- [46] The Officer also notes that sections 72 and 73 of the *Act* are relevant regarding compensation for a tenant who receives a termination notice for landlord's occupation. These sections state as follows:

72. A landlord shall compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to one month's rent plus reasonable moving expenses in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant.

73. Where the landlord is required to compensate a tenant under section 70, 71 or 72, the landlord shall compensate the tenant no later than the termination date specified in the notice of termination of the tenancy given by the landlord.

- [47] In this case, the termination date in the Notice has been extended to May 31, 2024, which would be latest date for the compensation referred to in the above sections to be provided to the Tenant.

[48] As noted above, the Landlord must immediately advise the Tenant and the Rental Office if circumstances change and the Landlord no longer intends to reside in the Rental Unit.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the parties shall terminate effective **5:00 p.m. on May 31, 2024**. The Tenant and all occupants must vacate the Rental Unit by this time and date.
2. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.
3. The Landlord must immediately advise the Tenant and the Rental Office if circumstances change and the Landlord no longer intends to reside in the Rental Unit.

DATED at Charlottetown, Prince Edward Island, this 15th 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.