

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"). 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(B)) (the "Notice") dated November 2, 2023 effective May 31, 2024. The Notice was given to the Tenant for the following reason:
- I want possession of the rental unit for myself.*
- [3] All documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with subsection 100.(1) of the *Act*.
- [4] On December 14, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord participated in the hearing.

Issue to be Decided

- i. Does the Tenant have to vacate the Rental Unit due to the Notice?

Summary of the Evidence

- [5] In 2011, the Landlord and the Tenant entered into a written one-year fixed-term tenancy agreement for the Rental Unit, after which it converted to a month-to-month tenancy agreement. The Residential Property is a triplex and the Rental Unit is one of its three units. Rent is \$580.00 due on the first day of the month. A security deposit was required and paid in the amount of \$275.00.

Landlord's Evidence and Submissions

- [6] The Landlord did not submit any documentary evidence.
- [7] The Landlord testified that she wishes to occupy the Rental Unit in response to some changes in her life. She testified that she is getting older and is looking to downsize her home. She said that the Rental Unit was appealing because it was a one-bedroom unit which was the smallest of the three units. The Landlord testified that she is unsure as to her future living plans. She may sell the Residential Property, keep it as it currently is, or convert the three rental units into one larger unit that she would occupy. When asked how long she would reside in the Rental Unit, the Landlord stated "Can anybody say? I could be dead tomorrow. I'm going to move my things in this summer and make it my property, I don't know if anybody can guarantee anything. What do you need, a guarantee for a year? I can guarantee a year."
- [8] The Landlord testified that she has not listed her current single-detached home for sale. She said that she had planned to sell it prior to the Covid pandemic, but those plans fell through. She stated that she is unsure what she will do with her house and may keep it, possibly to help her family's business.
- [9] The Landlord acknowledged a dispute took place between the Landlord and the Tenant a number of days prior to giving the Notice to the Tenant. She stated that a pest control worker was brought into the Rental Unit who suggested putting in a new ceiling to combat an infestation of mice. The Tenant wanted this, but the Landlord decided it was too expensive. The Landlord suggested that the Tenant, another tenant and the Landlord split the cost of pest control treatment. The Tenant and the Landlord had a dispute in which the Tenant repeatedly asked the Landlord to leave, which she eventually did.

- [10] The Landlord testified that her decision to evict the Tenant was not motivated by the argument she had with the Tenant a number of days prior. The Landlord testified that she was seeking the eviction lawfully and with ample notice to the Tenant.

Tenant's Evidence and Submissions

- [11] The Tenant submitted one page of written arguments as documentary evidence.
- [12] The Tenant argued that the Landlord is seeking to evict her in response to a dispute which took place six days prior to receiving the Notice. She testified that she contacted the Landlord about mice within the Rental Unit. She stated that the Landlord and a pest control worker attended the Rental Unit and the pest control worker suggested putting in a new ceiling to eliminate the sound of the mice footsteps. The Tenant asked for this to be done as she is often kept awake due to the sound of the mice, but the Landlord refused. The Landlord suggested that the Tenant pay for a portion of the ordinary pest control treatment, to which the Tenant argued that pest control is the Landlord's responsibility.
- [13] The parties argued with one another and the Tenant asked the Landlord multiple times to leave the Rental Unit, which she eventually did. The Tenant testified that she saw the Landlord a day or two later and that the Landlord was still upset with her. Four or five days later, the Landlord gave her the Notice.
- [14] The Tenant testified that this was the only dispute she has had with the Landlord over the 12 years of living in the Rental Unit. She argued that the timing of the eviction only days after their argument is clearly indicative that the Landlord is seeking to evict her in bad faith.

Analysis

- [15] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsection 62.(1)(a) of the *Act*, which states:

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.*

- [16] In such applications where there is a dispute over an eviction notice it is the landlord's burden to prove, on a balance of probabilities, their reason(s) for terminating the tenancy agreement. This means the landlord must provide the decision-maker with sufficiently clear, convincing and cogent evidence to prove their claim.
- [17] During the hearing, the Tenant submitted that her eviction was not in "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.
- [18] Section 62. of the *Act* is similar to section 48 of Ontario's *Residential Tenancies Act*, S.O. 2006, C. 17. In the Ontario Supreme Court decision, *Fava v. Harrison*, 2014 ONSC 3352 ["Fava"], 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]

- [19] 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).
- [20] 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.
- [21] The Officer notes that when asked how long she would reside in the Rental Unit, the Landlord stated:
- “Can anybody say? I could be dead tomorrow. I’m going to move my things in this summer and make it my property, I don’t know if anybody can guarantee anything. What do you need, a guarantee for a year? I can guarantee a year.”*
- [22] The Officer finds that the Landlord did not provide any convincing evidence to assist her claim that she intends to occupy the Rental Unit for at least one year. The Landlord testified that her current house is not for sale and she is unsure what she’ll do with it. The Officer further notes the Landlord’s suggestion that she may amalgamate the three units of the triplex into one unit that she will then occupy, despite having testified that she is occupying the Rental Unit in order to downsize and that this one was chosen because it is the smallest.
- [23] Further, the Officer notes the context of the timing of the Notice. The Tenant testified that over the course of 12 years living in the Rental Unit, she had never had a dispute with the Landlord, except for the dispute regarding mice which occurred on or around October 27, 2023. In that dispute, the Landlord and Tenant had an argument about what pest control measures should be taken and who should pay for it. The dispute ended with the Tenant repeatedly asking the Landlord to leave the Rental Unit. Six days later, the Landlord gave the Notice to the Tenant.
- [24] The Ontario Supreme Court in *Fava* found that a negative inference could be drawn as to whether the landlord is seeking occupation of a rental unit in good faith from the motives behind a landlord eviction. The Officer finds that the evidence suggests a negative inference regarding the Landlord’s intention to personally occupy the Rental Unit for at least a year, based upon the Notice being given so soon after a serious dispute between the parties.
- [25] The Officer finds that the Landlord’s testimony is not cogent and clear as to her reasons for occupying the Rental Unit and is suggestive that she does not intend to occupy it for at least one year. The Officer again notes that the burden of proof is on the Landlord to establish on the evidence the grounds for eviction in good faith under the Notice. The Officer finds that based on the evidence, the Landlord has failed to discharge her burden to prove that the eviction was in good faith pursuant to subsection 62.(1) of the *Act*. The Notice is invalid and the Application is allowed.

Conclusion

- [26] The Notice is invalid and the Application is allowed.
- [27] The tenancy agreement shall continue in full force and effect.
- [28] **Order LD23-603 will be served on the parties by email on December 19, 2023.**

IT IS THEREFORE ORDERED THAT

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

DATED at Charlottetown, Prince Edward Island, this 19th 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.