

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").
- [2] Attached to the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated November 18, 2023, with a vacate date of December 18, 2023. The Notice was served to the Tenant for the following reasons:

You or someone you have allowed on the property have disturbed or endangered others.

- [3] In the Application the Tenant disputes the Notice and seeks repairs to the Rental Unit.
- [4] On November 27, 2023 the Rental Office mailed and emailed the parties notice of a hearing scheduled for 11:00 a.m. on December 7, 2023.
- [5] On December 3, 2023 the Rental Office emailed an evidence package to the parties.
- [6] On December 7, 2023 a teleconference hearing was held with the parties for determination of the Application. The parties confirmed receipt of the evidence package at the hearing.

Preliminary Matters

- [7] The Officer finds that there is clearly a landlord-tenant relationship between the parties. The Landlord and the Tenant signed a written tenancy agreement and the Tenant pays rent to the Landlord in order to live in a residential unit.
- [8] In the documentary evidence submitted by the parties there is an issue regarding whether rent was paid for the period of November 16, 2023 to November 30, 2023, in the amount of \$550.00. This issue is beyond the scope of the Notice and the Application. At the hearing the Tenant did not agree to the determination of the rent matter. In these circumstances it would not be procedurally fair for the Officer to determine whether this rent is outstanding.
- [9] The Officer also notes that, with regard to photographic evidence, the best practice is to date stamp all photographs at the time they are taken.

Issues to be Decided

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

Summary of the Evidence

- [10] The Landlord has owned a two-bedroom, one-bathroom single family dwelling (the "Residential Property") since February of 2019.
- [11] The Landlord and the Tenant signed a written, month-to-month tenancy agreement dated February 4, 2023, with a commencement date of March 1, 2023. Rent in the amount of \$1,100.00 is due on the first day of the month and no security deposit was required.

Landlord's Evidence

- [12] The Landlord's evidence is summarized as follows. One of the Landlord's sons ("J.") had lived in the Residential Property since shortly after the purchase in February of 2019. The Landlord purchased this property because J. was having difficulty finding a place to rent that would permit him to have snakes. The Landlord and J. had an oral tenancy agreement and J. paid rent each month.
- [13] When the Tenant moved into the Rental Unit the Landlord was told that the Tenant required a written tenancy agreement for her worker because she is on assistance. The Tenant agreed to pay the full amount of rent to the Landlord by e-transfer and J. would pay half the rent amount to the Tenant.
- [14] The Landlord submitted into evidence a written statement regarding an incident involving J. and the Tenant that occurred on October 28, 2023 (Evidence Package pages 61 to 63). At the hearing the Landlord affirmed that the contents of her statement were true.
- [15] There was an Undertaking (Form 10) which originally prohibited J. from accessing the Residential Property and requiring a police escort. The Undertaking was amended to remove these conditions. The Landlord submitted into evidence a copy of the amended Undertaking. Clause 5.d. states "*You must not communicate, directly or indirectly, with [the Tenant], except in accordance with the following conditions: n/a.*"
- [16] The Landlord's position is that the Tenant has caused emotional trauma and stress to J. by the accusations the Tenant has made to the police and by placing a stay away order.
- [17] The Landlord stated that the charges against J. have been dropped.
- [18] The Landlord has required access to the Residential Property in order to care for J.'s snakes. The Tenant has become increasingly oppositional to the Landlord and J.'s attempts to care for the snakes. This has resulted in multiple calls to the police and the involvement of animal protection officers. The Tenant has also had a man with a criminal record present while the Landlord has cared for J.'s snakes. The police told the Landlord that the Tenant had accused the Landlord of harassment. Due to the Tenant's actions the Landlord has been placed in an extremely stressful situation which has affected the Landlord's health and well-being. The Landlord submitted into evidence text messages with the Tenant.
- [19] With regard to repairs, the only communication the Landlord received from the Tenant was a Facebook message sent on September 20, 2023. The Landlord had the heat pump cleaned, firewood delivered and the chimney and wood stove were cleaned by a professional. The Landlord provided evidence regarding other work completed for the Residential Property.

Tenant's Evidence

- [20] The Tenant's evidence is summarized as follows. When the Tenant first moved into the Rental Unit there was a discussion with J. and the Landlord that J.'s snakes would be allowed to stay in the property. J. would also be allowed to care for the snakes because he already had a "snake room" set up. In exchange, the Landlord and J. told the Tenant that she would receive \$550.00 cash back.
- [21] The Tenant submitted into evidence a written statement regarding an incident involving J. and the Tenant that occurred on October 28, 2023 (Evidence Package pages 20 to 22). At the hearing the Tenant affirmed that the contents of her statement were true.
- [22] The Undertaking was amended with the permission of the Tenant.

- [23] The Tenant disputes that the charges against J. have been dropped. The Tenant stated that J. will be completing alternative measures.
- [24] The Tenant disputes that she has disturbed or endangered the peace of others because only the Tenant lives in the Rental Unit, as stated in the written agreement.
- [25] The Tenant provided evidence regarding the condition of the Rental Unit. The Tenant reviewed photographs that she submitted into evidence regarding mold and the heating systems.
- [26] As of the hearing date, the Tenant had not requested an inspection of the Rental Unit by the Department of Environmental Health.

Analysis

Effective Date

- [27] In this case the effective termination date in the Notice should have been December 31, 2023. Subsection 61(3) of the *Residential Tenancy Act*, RSPEI 1988, R-13.11 (the “Act”) states:

A notice of termination under this section shall end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received; and*
(b) the day before the day that rent is payable under the tenancy agreement.

- [28] The Tenant’s rent is due by the first day of the month. Subsection 61(3) requires that the Tenant receive at least one full month’s notice to vacate. The period commencing November 18, 2023, the date of service, to November 30, 2023 does not count towards this full month. Instead, the full month would be from December 1, 2023 to 5:00 p.m. on December 31, 2023.
- [29] The Officer finds that the Notice is automatically changed from December 18, 2023 to December 31, 2023, pursuant to section 54 of the *Act*.

Rental Unit

- [30] Landlords are permitted to rent out portions of a building or unit, so long as the requirements of the *Act* are met. In this case, the Residential Property is the entire single family dwelling. The Rental Unit is a smaller portion of the Residential Property, which does not include the snake room.

Validity of the Notice

- [31] The Landlord seeks to terminate the tenancy pursuant to clause 61(1)(d), which states as follows:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

- (d) the tenant or a person permitted on the residential property by the tenant has*
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
(iii) put the landlord’s property at significant risk;

- [32] The Landlord’s position is that the Tenant has caused emotional trauma and stress to J. by the accusations the Tenant has made to the police and by having a stay away order placed, which has restricted J.’s access to the Residential Property.

- [33] In this case the only direct evidence before the Officer regarding the October 28, 2023 incident is from the Tenant. The Landlord and her witness were not present when the incident occurred and there is no direct evidence from J.
- [34] It is understandable why J. would not participate in the Rental Office hearing or submit a written statement. The Officer expects that any defence lawyer would advise their client against providing such evidence while being accused of committing a criminal offence.
- [35] Further, unless an exception was made, the Undertaking (Form 10) prohibits communication between J. and the Tenant.
- [36] If the Landlord were to prove that the Tenant falsely accused J. of criminal conduct, then this would be a valid basis for ending the tenancy agreement. However, there is no direct evidence before the Officer challenging the Tenant's description of the October 28, 2023 incident. The Tenant's evidence is that she was the victim of criminal conduct perpetrated by J.
- [37] Generally speaking, the victim of criminal conduct would not normally be served with an eviction notice on the basis that the perpetrator, as a consequence of their actions, has had their access to a residential property restricted.
- [38] The Landlord's evidence is that the criminal charges against J. were dropped and the Tenant's evidence is that J. will be subject to alternative measures.
- [39] Even if the charges were dropped with no alternative measures, the Officer would be unable to infer that the Tenant falsely accused J. of criminal conduct. A number of other explanations would be possible.
- [40] The Officer has reviewed all of the evidence, including the text messages between the parties (Evidence Package pages 72 to 80). There is clearly a strained relationship between the Landlord and the Tenant. It is also clear that the October 28, 2023 incident and the care of the snakes since that time has been very stressful for the Landlord.
- [41] However, the Tenant's conduct regarding the access to the Residential Property does not justify termination of the tenancy agreement. The text messages show that the Tenant has left the Rental Unit on a number of occasions to facilitate the care of the snakes. In a number of the text messages the Tenant has expressed concern for the snakes and brought potential risks to the Landlord's attention (for example, the text message from the Tenant to the Landlord at 12:57 a.m. on November 15, 2023; Evidence Package page 76). The Officer finds that the Landlord has not established a breach of clause 61(1)(d).
- [42] As a result, the Notice is invalid and the Application is allowed in part.
- [43] The Tenant must continue to allow access to the Residential Property to facilitate the care of the snakes, in accordance with section 23 of the *Act*.

Repairs

- [44] The parties provided conflicting evidence regarding the condition of the Rental Unit. In this case the Officer does not have the benefit of an inspection letter from the Department of Environmental Health, which would provide an independent assessment of the condition of the Rental Unit.
- [45] Based upon the evidence presented, the Officer does not have a sufficient evidentiary record to issue an order for repairs.

Conclusion

- [46] The Notice is invalid and the Tenant's request for repairs is denied. The Application is allowed in part.
- [47] The evidence presented indicates that the Landlord purchased the Residential Property in order for the Landlord's son to have a place to live with his snakes. Due to the Tenant's evidence regarding the incident that occurred on October 28, 2023, it does not appear to the Officer that J. and the Tenant are able to simultaneously live in the Residential Property.
- [48] The Landlord may decide to serve a termination notice (Form 4(B)) to the Tenant for occupation of the Residential Property by J. The Officer notes that the validity of such a termination notice is beyond the scope of this decision.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid and the Application is allowed in part.
2. The tenancy between the Landlord and the Tenant will continue in full force and effect.
3. The Tenant must continue to allow access to the Residential Property to facilitate the care of the snakes in accordance with section 23 of the Act.

DATED at Charlottetown, Prince Edward Island, this 21st 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.