

Introduction

- [1] On December 4, 2023 the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* with the Residential Tenancy Office (the "Rental Office") seeking earlier termination of the tenancy and possession of the Rental Unit (the "Application"). The Application also seeks a determination whether the Tenant sublet or assigned the rental unit without the Landlord's written consent and whether the Tenant has charged her Subtenant more rent than permitted.
- [2] On December 2, 2023 the Representative had previously emailed the Tenant the original copy of the Application, which did not include a claim for earlier termination. On December 4, 2023 the Representative emailed the Tenant an amended copy of the Application, which included the claim for earlier termination.
- [3] On December 13, 2023 the Rental Office emailed the parties the Application and notice of a teleconference hearing scheduled for 1:00 p.m. on December 19, 2023.
- [4] On December 18, 2023 the Rental Office emailed the parties an evidence package. Only the Landlord had previously submitted documentary evidence.
- [5] At 1:00 p.m. on December 19, 2023 the Representative called into the scheduled teleconference hearing before the Residential Tenancy Officer (the "Officer"). The Tenant did not call into the teleconference hearing. The Rental Office telephoned the Tenant but there was no response. The Officer waited until 1:10 p.m. before proceeding with the hearing in the absence of the Tenant. The hearing concluded at 1:57 p.m. without participation from the Tenant.

Issues to be Decided

- i. Should the tenancy be terminated early, in accordance with subsections 61(7) and (8) of the *Residential Tenancy Act*, RSPEI 1988, R-13.11 (the "Act")?
- ii. Did the Tenant sublet or assign the rental unit without the Landlord's written consent?
- iii. Did the Tenant charge her Subtenant more rent than permitted by the *Act*?

Summary of the Evidence

- [6] The Landlord's evidence is summarized as follows. The Rental Unit is a one-bedroom, one-bathroom apartment located in a six-unit building (the "Residential Property").
- [7] The former owner of the Residential Property ("K.") and the Tenant entered into an oral, month-to-month tenancy agreement that commenced on November 1, 2020. Rent in the amount of \$836.00 is due on the first day of the month and a \$400.00 security deposit was paid. The rent includes heat, internet and water but not electricity. The Landlord purchased the Residential Property on December 1, 2023 and the Tenant's tenancy continued.
- [8] On November 30, 2023 K. emailed the Tenant a termination notice (Form 4(A)) (the "Notice") with an effective date of December 31, 2023. The Notice was served for subletting the rental unit without the landlord's consent.
- [9] On December 2, 2023 the Landlord posted to the door of the Rental Unit an additional termination notice (Form 4(A)) (the "Supplemental Notice"). The words "*& all other occupants*" were added at the top of this notice beside the Tenant's name. The Landlord also added items (d) and (i) as bases for termination, being an unreasonable number of occupants in the Rental Unit and failure to comply with a material term of the tenancy agreement.
- [10] The Landlord submitted into evidence a document titled "*Sublease Agreement*" (the "Sublease"), signed by the Tenant and a subtenant (J.H., the "Subtenant"). The Representative was provided with a copy of the Sublease from the Subtenant on December 3, 2023. The Sublease is dated

November 30, 2023. The Representative believes that the Sublease may have been signed on an earlier date. The Sublease is a fixed term tenancy agreement, for the period of December 1, 2023 to May 30, 2024. The monthly rent is \$1,000.00 which includes internet, heat and water. Electricity is partly included, up to \$50.00 per month, with any excess amount being paid by the Subtenant.

- [11] The Landlord and K., the former owner, never agreed to the Tenant subletting the Rental Unit. The Representative submitted into evidence email correspondence from the Tenant regarding the Sublease.
- [12] The Representative submits that the Tenant was being dishonest regarding the Sublease and was attempting to take advantage of the change in ownership of the Residential Property.
- [13] On December 2, 2023 the Representative and K. attended the Rental Unit and advised the Subtenant that she must vacate. The police attended the Rental Unit on December 3, 2023 and found the Subtenant and another person, D.G., in the unit. The Subtenant and D.G. vacated the Rental Unit shortly thereafter with all of their possessions. The details of the incident are found on pages 7 and 8 of the Evidence Package.
- [14] The Subtenant returned to the Residential Property on December 12, 2023 and broke into the Rental Unit. Another tenant in the Residential Property notified the Representative of suspicious activity, which was seen by the Representative on December 13, 2023. The Representative contacted the police who then attended the Rental Unit. The Subtenant refused to allow the police access to the Rental Unit because the Tenant had not refunded December 2023 rent or the security deposit. The police entered the Rental Unit by force and arrested the Subtenant and D.G.
- [15] The Officer notes that the Tenant has not filed an application disputing the Notice or the Supplemental Notice. The Tenant did not file documentary evidence with the Rental Office contesting the Application.

Analysis

Earlier Termination

- [16] The Landlord's reasons in the Notice and the Supplemental Notice for ending the tenancy are based upon clauses 61(1)(c), (h) and (i) of the *Act*, which state as follows:

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

- (c) there is an unreasonable number of occupants in the tenant's rental unit;*
- (h) the tenant*

- (i) has failed to comply with a material term of the tenancy agreement, and*
- (ii) has not corrected the situation within a reasonable time after the landlord has given written notice to do so;*

- (i) the tenant purports to assign or sublet the rental unit without first obtaining the landlord's written consent as required by section 30.*

- [17] However, in this case the Landlord seeks earlier termination of the tenancy. The law for earlier termination of a tenancy agreement is set out in subsections 61(7), (8) and (9), which state:

(7) Despite subsection (3), a landlord who wishes to give notice of termination under subsection (1) may make an application to the Director to request an order

- (a) ending a tenancy on a date that is earlier than the tenancy would end if the notice of termination were given under subsection (1); and*
- (b) granting the landlord an order of possession in respect of the rental unit.*

- (8) *The Director shall grant an application under subsection (7) only if the Director is satisfied that*
- (a) *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,*
 - (iii) *put the landlord's property at significant risk,*
 - (iv) *engaged in illegal activity that*
 - (A) *has caused or is likely to cause damage to the landlord's property,*
 - (B) *has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (C) *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord,*
 - (v) *caused unreasonable damage to the residential property, or*
 - (vi) *frustrated the tenancy agreement; and*
 - (b) *it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice of termination under subsection (1) to take effect.*
- (9) *Where the Director makes an order under subsection (7), it is unnecessary for the landlord to give the tenant a notice of termination.*

- [18] The Supplemental Notice added two additional reasons for termination that were not included in the Notice. Although the effective date of the Supplemental Notice is blank, the earliest effective date for these two additional reasons would have been January 31, 2024 (subsection 61(3)).
- [19] The three reasons for ending the tenancy in the Notice and the Supplemental Notice (clauses 61(1)(c), (h) and (i)) are not eligible reasons for earlier termination (subsection 61(8)). Therefore, the Landlord could not end the Tenant's tenancy solely on the basis of an unauthorized sublet.
- [20] The Officer has reviewed the Landlord's documentary evidence and the Representative's testimony at the hearing. It appears to the Officer that the Subtenant's behaviour on December 12 and 13 reached a level that justifies earlier termination of the Tenant's tenancy agreement. The Officer notes that earlier termination in this case is based upon the behaviour of a person permitted on the Residential Property by the Tenant.

Date of Earlier Termination

- [21] Subsection 85(5) states:

(5) The sheriff shall not enforce an order under clause (1)(f), (g) or (h) until the time period for an appeal to the Commission under subsection 89(4) or (5) has expired.

- [22] Subsections 89(4) and (5) state:

(4) A notice of appeal shall be served on the Commission and other persons referred to in subsection (3) within 20 days after a copy of the Director's order is provided to the person commencing the appeal.

(5) Despite subsection (4), an appeal from an order directing a tenant to vacate the rental unit for non-payment of rent under section 60 or for cause under section 61 shall be served on the Commission within seven days after a copy of the Director's order is given to the tenant.

- [23] The Tenant's appeal period expires on December 28, 2023 and this Order would not be enforced by Sheriff Services until the appeal period has expired. It appears to the Officer that this is the earliest date that the Tenant can be ordered to vacate the Rental Unit.
- [24] The Officer finds that the Tenant and all occupants must vacate the Rental Unit by 5:00 p.m. on December 28, 2023.

The Sublease

- [25] Subsection 30(1) states:

A tenant may, with the written consent of the landlord, sublet or assign a rental unit or part of a rental unit to another person.

- [26] The Representative's evidence is that the Landlord and K. never consented to the Tenant subletting the Rental Unit. The Tenant's email dated December 2, 2023 at 12:28 PM provides the Tenant's explanation why she did not obtain consent for the sublet, which is an admission that the Tenant did not obtain consent to sublet.
- [27] The Officer notes that the Tenant should have obtained K. or the Landlord's consent in advance of signing the Sublease. It appears to the Officer that there were other reasonable options available to the Tenant other than subletting the Rental Unit without the Landlord's approval.
- [28] The Tenant's failure to obtain the Landlord or the former owner's consent to the Sublease resulted in the Subtenant (J.H.) and her guest (D.G.) having no lawful basis to occupy the Rental Unit.

Sublease Rent Amount

- [29] Clause 30(8)(a) of the *Act* states:

A tenant (a) shall not charge a subtenant more rent than is payable under the tenancy agreement.

- [30] Based upon the evidence presented, the Tenant charged an unlawful rent increase to the Subtenant.
- [31] The Tenant's monthly rent payable to the Landlord was \$836.00, without electricity. The Sublease requires the Subtenant to pay the Tenant \$1,000.00, with a \$50.00 credit for electricity. As a result, the evidence presented establishes that the Tenant charged the Subtenant an unlawful rent increase of \$114.00, in contravention of clause 30(8)(a).
- [32] The Sublease security deposit of \$600.00 is higher than the Tenant's security deposit with the Landlord of \$400.00 (plus applicable interest). However, the *Act* only restricts the security deposit to the monthly lawful rent (subsection 14(3)). Therefore, the sublet security deposit limit for this Rental Unit was \$836.00, even though the Landlord holds a smaller security deposit.

Conclusion

- [33] The Application is allowed. The Tenant and all occupants must vacate the Rental Unit as provided below.

- [34] The Officer notes that the wording contained in the “Ordered” section below is the standard wording used where a rental unit must be vacated.
- [35] 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.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the Landlord and the Tenant shall terminate effective **5:00 p.m. on December 28, 2023**. 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 Subtenant, J.H., and her guest, D.G., have no lawful basis to occupy the Rental Unit.

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 7 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.