

Introduction

- [1] On December 14, 2023 the Tenant filed a first *Tenant Application to Determine Dispute* (Form 2(A)) (the “First Application”) with the Residential Tenancy Office (the “Rental Office”) seeking the following remedy:
- “To request a determination that my landlord contravened my right to quiet enjoyment, entered the rental unit unlawfully, prohibited and/or restricted access to the rental unit, changed the locks or failed to secure the rental unit, failed to repair or maintain the rental unit, or any other material term of the tenancy agreement.”*
- [2] On December 19, 2023 the Tenant filed a second *Tenant Application to Determine Dispute* (the “Second Application”) with the Rental Office seeking to dispute an eviction notice.
- [3] Attached to the Second Application was an *Eviction Notice* (Form 4(B)) (the “First Notice”) dated December 18, 2023, with a vacate date of January 31, 2024. The Officer notes that the earliest effective date was April 30, 2024, being four full months after the date of service. This notice was served to the Tenant because the Landlord wants possession of the Rental Unit for herself and her child.
- [4] In this decision the First Application and the Second Application are collectively referred to as the “Applications.”
- [5] On December 21, 2023 the Rental Office emailed the parties notice of a teleconference hearing scheduled for 9:00 a.m. on January 9, 2024.
- [6] On December 21, 2023 the Landlord served the Tenant with a second *Eviction Notice* (the “Second Notice”) with an effective date of April 30, 2024. This notice was served to the Tenant because the Landlord wants possession of the Rental Unit for herself, her child and her spouse.
- [7] On January 4, 2024 the Rental Office emailed the parties an evidence package.
- [8] On January 9, 2024 a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”) for determination of the Applications. The parties confirmed receipt of the evidence package. The Tenant participated in the hearing with his two subtenants and the Landlord participated in the hearing with her interpreter.

Preliminary Matters

- [9] At the hearing the Tenant stated that, pursuant to the First Application, he was seeking \$1,700.00 compensation and the removal of a wall inside the Rental Unit installed by the Landlord. The Landlord stated that the wall installation cost was approximately \$3,000.00. Upon hearing the Landlord’s installation cost, the Tenant withdrew his request for removal of the wall and requested solely \$1,700.00 in compensation.
- [10] The Officer noted to the parties that the First Application did not state an amount of compensation being sought by the Tenant. The Officer stated that the First Application could be amended to add the \$1,700.00 claim and the matter be determined at a later hearing. The Officer advised the parties that, alternatively, the First Application could be amended by the agreement of the parties to add the \$1,700.00 claim and the Officer could hear the parties’ testimony during the hearing at the same time that the Second Application was heard. The Landlord would be permitted to submit additional documentary evidence regarding the Tenant’s monetary claim.
- [11] The parties did not want an additional Rental Office hearing for determination of the First Application. The parties agreed to the First Application being amended to add the Tenant’s claim

of \$1,700.00, to be heard at the same time as the Second Application. After the hearing the Landlord submitted to the Rental Office one additional document, a receipt, which was added to the record. The Tenant was provided with a copy of the additional document and he confirmed he did not have any further comment.

- [12] With regard to the Second Application, at the hearing the Landlord stated that the First Notice was withdrawn and cancelled.
- [13] The Officer noted that the Second Application was filed before the Second Notice was served. The Officer also noted that the First Notice and the Second Notice were served for a similar reason, namely the Landlord's occupation of the Rental Unit. The Officer further noted that the Tenant would still be within the deadline to file an additional application to dispute the Second Notice. With the agreement of the parties, the Second Application was amended to dispute the Second Notice. The scheduled January 9, 2024 hearing proceeded for the determination of the Applications.

Issues to be Decided

- i. Does the Tenant and all occupants have to vacate the Rental Unit pursuant to the Notice?
- ii. Should the Tenant be compensated by the Landlord due to the installation of an interior wall in the Rental Unit?

Summary of the Evidence

- [14] The Tenant and the property manager of the former owner of the Rental Unit entered into a written, fixed term tenancy agreement for the period of January 1, 2023 to July 31, 2023. At the end of the fixed term the tenancy continued on a month-to-month basis. Rent in the amount of \$1,700.00 is due on the first day of the month and a security deposit of \$1,700.00 was paid. The Landlord purchased the Rental Unit on December 7, 2023 and the tenancy continued.
- [15] The rent includes the following services and facilities: heat, water, hot water, cooking stove, refrigerator, washer, dryer, grass cutting, furnished, and snow removal for parking lot and walkways.
- [16] The Rental Unit is a three-bedroom, one-and-a-half-bathroom townhouse/condo with a kitchen and a living room.

Landlord's Evidence

- [17] The Landlord's evidence is summarized as follows. On September 18, 2023 the Landlord moved to Prince Edward Island and she rented an Airbnb property.
- [18] The Landlord currently rents a house in Charlottetown from a friend in China. The monthly rent is \$2,500.00, plus the Landlord pays heating costs of about \$300.00, electricity costs and internet costs. There is no written tenancy agreement between the Landlord and her friend.
- [19] The Landlord had two purchases fall through before being able to buy the Rental Unit. The Landlord had decided to include limited conditions in the contract of purchase and sale for the unit. The Rental Unit is the sole real property owned by the Landlord on Prince Edward Island. The Landlord purchased the Rental Unit with the intention of living in the property. The Landlord had expected that, because the Tenant is a student, he would want to move out at the end of April.
- [20] The Tenant's son currently attends Colonel Grey High School and the Landlord expects that her spouse will arrive on the Island in April or May of this year.

- [21] The Landlord had the wall installed between the living room and the kitchen because the Landlord's niece is expected to come to the Island from China and she could live in this room. The Landlord's niece has applied to be an international student. The Landlord could also use the living room as an office.
- [22] The Landlord could have given the Tenant two months' notice of eviction as a purchaser instead of four months as an owner.
- [23] The Tenant agreed to the installation of the interior wall between the living room and the kitchen. The Tenant gave his key to the person that completed the work. The wall construction started on December 13, 2023 and ended on December 19, 2023. The Tenant's neighbour, Mr. Wang, would work for two to three hours per day and he would clean the unit daily.
- [24] The Landlord submitted into evidence a receipt dated December 12, 2023 containing the materials cost for the wall installation. The Landlord paid about \$3,000.00 in total for the wall installation.
- [25] During the wall renovation the Landlord had the living room sofa removed from the Rental Unit. The sofa belongs to the Landlord because it was part of the purchase from the former owner of the unit.
- [26] The first level and the second level of the Rental Unit are the same size, about 600 square feet for each level. The living room and the kitchen are about the same size. The half bathroom on the first floor contains a washer and dryer and there is also a hallway and stairs. The measurements of the living room are 12 feet by 13 feet, being 156 square feet.

Tenant's Evidence

- [27] The Tenant's evidence is summarized as follows. The Tenant does not believe that the Landlord and her family will move into the Rental Unit in May of 2024. The Tenant believes that the Landlord wants the Tenant and the subtenants to move out in order to rent the unit to other tenants at a higher rent. The Tenant submitted into evidence WeChat correspondence with the Landlord along with the Tenant's English translation.
- [28] The Landlord did not mention to the Tenant that she would have her niece live in the Rental Unit. The Tenant believes that, if the Landlord moves into the Rental Unit, then she may rent the living room to someone other than her niece.
- [29] The Tenant submits that the condition of the house the Landlord currently lives is better than the Rental Unit. The Tenant submits that the Landlord would only save \$200.00 to \$300.00 by moving into the Rental Unit. The Tenant submits that the Rental Unit is not suitable for occupation by four people due to its size. The Tenant and his subtenants do not own a car and it is difficult to find a place to live near the university.
- [30] The Tenant spoke with the former property manager of the Rental Unit and the Landlord knew that four months' notice was required for eviction, not two months.
- [31] On December 7, 2023 the Landlord WeChat messaged the Tenant and advised that the wall renovation would only take one or two days. The work was completed by the Tenant's neighbour, Mr. Wang.
- [32] On December 11, 2023 Mr. Wang visited the unit and took measurements. On December 12, 2023 the interior wall installation commenced. The work lasted for about a week and Mr. Wang would attend the Rental Unit without giving notice. Some days the construction lasted from 9:00 a.m. to 9:00 p.m. The construction noise effected the occupants for a week and the dust and wall painting effected these occupants for an additional three days. The Tenant had asked Mr. Wang not to paint the wall but Mr. Wang did not listen. The paint smell caused the occupants to have headaches.

- [33] The construction work during the morning effected the Tenant's sleep. The Tenant was completing his final examinations and the wall installation was very disruptive. Dust from the construction work was all over kitchen and got into the Tenant's food while cooking. The Tenant originally agreed to the wall construction but then he became aware of his rights as a tenant. The Tenant asked the Landlord to stop the wall construction but the Landlord refused.
- [34] The Landlord had the living room sofa removed from the Rental Unit. Left over construction material remains in the living room. The Tenant and subtenants previously used the living room for eating. Due to the wall construction and the removal of the sofa the occupants no longer use the living room. One of the subtenants had previously stored his bicycle in the living room.
- [35] The Tenant and the subtenants did not stay in a hotel or another unit while the wall construction occurred. The Tenant and subtenants did not have any out of pocket expenses regarding the wall construction.
- [36] The Tenant believes that the living room is about half of the Rental Unit's first floor and 25% to 30% of the entire unit.

Analysis

Landlord's Occupation – Good Faith

- [37] The Landlord seeks to end the tenancy pursuant to section 62 of the Act, which states in part:
- (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.*
- [38] Section 62 of the Act is similar to section 48 of Ontario's *Residential Tenancies Act*, S.O. 2006, C. 17.
- [39] 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]

- [40] The Officer notes that this interpretation of “good faith” is the same as section 15 of Prince Edward Island’s former rental law, the *Rental of Residential Property Act* RSPEI 1988, R-13.1 (the “RRPA”). This section also addressed occupation of a rental unit by a landlord (see Island Regulatory and Appeals Commission (the “Commission”) Orders LR19-09, LR19-16 and LR21-50).
- [41] 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 remained similar to Ontario’s legislation. It appears to the Officer that “good faith” still means whether a landlord has a genuine intention to reside in a rental unit.

The Second Notice

- [42] In this case there was a strained relationship between the parties at the time Second Notice was served. There was an existing dispute regarding the installation of the living room wall and the Tenant had already filed the First Application with the Rental Office regarding his right to quiet enjoyment of the Rental Unit.
- [43] The Tenant’s position is that the Landlord does not actually intend on moving into the Rental Unit. The Tenant submitted that the Second Notice may have been served in order for the Landlord to later re-rent the unit for a higher, unlawful rent.
- [44] The Officer has reviewed the testimony of the parties and the documentary evidence submitted. The Tenant’s translated WeChat correspondence from December 6 to December 13, 2023 is of particular assistance regarding the determination of this matter. Based upon this correspondence, it appears that both the Landlord and the Tenant were unfamiliar with the minimum notice period for occupation of the Rental Unit by the Landlord and the rent controls contained in the *Act*.
- [45] Based upon the correspondence, on December 6, 2023 the Tenant did not know that he was entitled to four full months’ notice for an eviction based upon the Landlord’s occupation of the Rental Unit. On December 6, 2023 the earliest effective termination date would have been April 30, 2024.
- [46] It appears that, as the Tenant was unaware of the minimum notice period, he initiated negotiations against his own interests for what he was already entitled to. The Tenant sent the following WeChat message to the Landlord on December 6, 2023:

“Hello, I just found out today that you plan to move into this house. I completely understand. However, I only graduate in May, and I wanted to ask if I could stay until the end of April or early May before moving out if I increase the rent? This would give me enough time to arrange my graduation and relocation. If that’s possible, what do you think would be an appropriate increase in the rent? Mainly because I don’t have a car, moving elsewhere is inconvenient. Thank you for considering my request, and I look forward to your reply!”

- [47] The Landlord responded the same day with the following messages:

*“The house I’m renting now is very expensive, costing 2800 a month for heating alone.”
“So, I have no choice.”*

- [48] As a result, this does not appear to be a case where the Landlord initiated a request for an unlawful rent increase.
- [49] The Landlord’s evidence at the hearing is consistent with the earlier WeChat correspondence regarding the high expense of her current accommodations and the financial incentive for her to move into the Rental Unit. The Landlord currently pay rent and heating in the amount of \$2,800.00 and receives rent in the amount of \$1,700.00 for a tenancy agreement that has heat as an included

service. Based upon the evidence presented, it appears that the Landlord could save \$1,100.00 by moving into the Rental Unit.

- [50] The Officer notes that in Order LR21-50, the Commission found that a financial incentive for landlord's occupation of a rental unit was a reasonable explanation for the landlord choosing a specific unit for occupation.
- [51] Further, in this case the Officer has the direct evidence of the Landlord, one of the persons intending to move into the Rental Unit. The Landlord testified that she does not own any other real property on the Island and she purchased the property with the intent of moving in.
- [52] For the reasons above, it appears that the strained relationship between the parties co-exists with the Landlord and her family having a genuine intention to occupy the unit (see Commission Order LR19-09). The Officer is unable to draw an inference that the Landlord will not move into the Rental Unit with regard to the living room wall dispute.
- [53] The Officer finds that the Second Notice is valid and the Second Application is denied. The Tenant and all occupants must move out of the Rental Unit as provided below.

Compensation for Landlord's Occupation

- [54] The Officer 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:

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.

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.

- [55] The Officer notes that the compensation referred to in section 72 and 73 is in addition to the compensation awarded in this decision below.

Installation of the Living Room Wall

- [56] The Tenant seeks \$1,700.00 in compensation due to the Landlord's installation of the living room wall and the negative impact on the Tenant's right to quiet enjoyment and use of the Rental Unit.

- [57] Section 22 of the *Act* states:

A tenant is entitled to quiet enjoyment of the rental unit including, but not limited to, the right to

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit, subject only to the landlord's right to enter the rental unit in accordance with section 23;

and (d) use of common areas for reasonable and lawful purposes, free from significant interference.

- [58] The Landlord's defence is that the Tenant consented to the construction work. However, the Officer notes that in the WeChat messages the Landlord represented that the construction would only take

one or two days when the work in fact took approximately one week. Further, the Tenant withdrew his consent to the construction work but the work continued.

[59] Most importantly, section 5 of the *Act* states:

Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.

[60] The Officer finds that any consent by the Tenant waiving or releasing his right to quiet enjoyment and use of the Rental Unit was void and of no effect.

[61] The Tenant's direct evidence was that the construction work was a highly disruptive event. It appears to the Officer that the construction work took approximately seven days to be completed and an aversive paint smell remained for approximately three additional days. The evidence establishes a return of rent for 10 days in December 2023, in the amount of \$548.39.

[62] The evidence presented also establishes that the living room wall installation has reduced the Tenant's usage of the Rental Unit. It appears to the Officer that the Landlord's detailed description of the living room square footage is the best method for calculating the reduced usage. The Landlord testified that the living room square footage is 156 and the total square footage is 1200. Therefore, the living room composes 13% of the entire Rental Unit.

[63] The Officer finds that the Tenant is entitled to compensation from the last week of December 2023 up to the termination date of April 30, 2024 at 13% of the monthly \$1,700.00 rent, in the amount of \$933.90.

[64] The total amount awarded to the Tenant is \$1,482.29 (\$548.39 plus \$933.90).

[65] The Officer also notes that the installation of the living room wall would not exempt the Landlord from the rent controls set out in the *Act*.

Conclusion

[66] The Second Notice is valid and the Second Application is denied. The Tenant and all occupants must vacate the Rental Unit as provided below.

[67] The First Application is allowed in part. The Landlord must pay the Tenant \$1,482.29 by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the parties shall terminate effective **5:00 p.m. on April 30, 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 pay the Tenant \$1,482.29 by February 1, 2024.

DATED at Charlottetown, Prince Edward Island, this 12th day of January, 2024.

(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.