

Introduction

- [1] On September 5, 2023, the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The purpose of the Application is to dispute a Notice of Termination.
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the “Notice”) dated December 12, 2023, effective December 31, 2023. The Notice was given to the Tenant for the following reasons:
- You have permitted an unreasonable number of occupants in the rental unit;*
You or someone you have allowed on the property have disturbed or endangered others;
You or someone you have allowed on the property have engaged in illegal activity on the property;
You or someone you have allowed on the property has caused damage to the rental unit;
You have failed to comply with a material term of the tenancy agreement;
You have knowingly given false information about the rental unit.
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the Act.
- [4] On January 22, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). A Landlord Representative, a Landlord witness, the Tenant, and a Tenant witness appeared.

Issue to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [5] In August of 2021 the parties entered into a verbal month-to-month term tenancy agreement for the Residential Property. Rent is \$850.00 due on the first day of the month. A security deposit of \$850.00 was required and paid.

Landlord’s Evidence and Submissions

- [6] The Landlord submitted several pages of documents into evidence including a warning letter to the Tenant, emails from the City of Summerside, a letter from the Landlord’s witness, and some photographs.
- [7] The Representative stated the Tenant’s son and his friends have been causing disturbances in the rental unit and building. The Tenant’s son broke into the building’s laundry room and has been using drugs and leaving needles and drug paraphernalia in the laundry room and meter room. The Representative acknowledged the Tenant kicked her son out of the rental unit but her son then broke back into the building.
- [8] The City of Summerside sent an email to the Representative stating they have encountered garbage and used needles in the meter room. The email stated the Landlord is required to provide city employees safe access to the meter room or the city may refuse to provide electrical service to the building. The Representative stated the city may disconnect the building’s electricity if the drug use continues and the meters cannot be accessed.

- [9] The Tenant has been verbally warned several times about her son and his friends doing drugs and leaving used needles in the building. On December 1, 2023, a written warning was provided to the Tenant. The warning stated the Landlord has received many complaints about excessive noise coming from the rental unit, hallways, and laundry room. The furnace room was broken into and one of the Tenant's son's friends was found doing "his business" by the door. The Representative stated he did not witness any of the behaviour and he is being kept updated by his staff.
- [10] The Representative testified P.M. has been living in the rental unit for two years without the Representative's permission. He stated this is a violation of the tenancy agreement, as only the Tenant was given permission to live there.
- [11] M.P. stated he is an employee of the Landlord. M.P. stated he has cleaned up over 500 used needles and other drug paraphernalia in and around the building. He stated he has not witnessed any of the drug use but other tenants in the building have told him it is the Tenant's son and his friends who are using the drugs and leaving the needles lying round. Other tenants have also told M.P. that there have been disturbances and damages in the building caused by the Tenant's son and his friends.

Tenant's Evidence and Submissions

- [12] The Tenant stated her son did use drugs in the past but he does not use drugs now. He did show up at the rental unit drunk recently and she kicked him out for being drunk. She stated her son did stay with her for 1.5 months when he was sick, but she let the property manager ("L.M.") know about it. She denied that it is her son or her son's friends who are leaving the used needles in the building. She stated that neither she nor P.M. use drugs.
- [13] The Tenant stated L.M. is not managing the building properly, as the security doors are often broken and individuals not associated to her or her son are causing problems in the building. She and P.M. have kicked people out of the building they have seen causing problems or who do not live there.
- [14] The Tenant and P.M. stated they told L.M. that P.M. had moved into the rental unit and L.M. did not have any problem with it. Both L.M. and M.P. were aware P.M. had been living there for the past two years. They stated if the property managers did not let the Representative know this information then it is not the Tenant's fault. They stated L.M. should be present at the hearing as she is the property representative they deal with and they do not have contact with the Representative.

Analysis

Issue i: Does the Tenant have to vacate the Residential Property due to the Notice?

- [15] The Officer begins by referencing the relevant law for the Application. The Landlord's reasons for terminating the tenancy agreement are pursuant to subsections 61.(1)(c),(d),(e),(f),(h),and (j) of the Act, which state:

61. Landlord's notice for cause

(1) 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;

(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;

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property;

(ii) 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;

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant;

(f) the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property;

(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;

(j) the tenant knowingly gives false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person.

[16] The Landlord's evidence for termination of the tenancy agreement can be summarized as:

- a. The Tenant is allowing her son and her son's friends into the building. They are causing disturbances in the building, they are damaging the building, they are using drugs in the building, and are leaving used needles around. The used needles are also hindering the City of Summerside from being able to access the building's meters, which could result in the building's power being disconnected.
- b. The Tenant has allowed P.M. to move into the rental unit without permission from the Representative.

[17] After reviewing the documentary evidence and the testimony of the parties, the Officer finds that the Landlord has failed to establish valid grounds for terminating the tenancy agreement. Neither the Representative nor M.P. has witnessed the drug use, damages, or disturbances. M.P. stated he was notified by other tenants that it was the Tenant's son and his friends who are involved in the drug use and they are the individuals causing the disturbances and damages.

[18] However, none of the Landlord's witnesses testified at the hearing to provide affirmed testimony to provide context and to be tested under scrutiny and examination. The Officer notes that such evidence from the witnesses at the hearing would have been of assistance for the determination of this matter regarding the drug use, disturbances, and damages.

[19] Regarding P.M. moving into the rental unit, the Tenant stated she did advise L.M. and both L.M. and M.P. were aware P.M. had moved in. Both parties testified L.M. was the Tenant's point of contact for the rental unit. The Representative stated he was only recently advised M.P. had been living there for two years. However, the Officer notes that L.M. did not testify at the hearing to provide further context and such evidence from P.M. at the hearing would have been of assistance for the determination of this matter.

- [20] 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 and convincing evidence to prove their claim(s). The Officer finds that based on the evidence presented the Landlord has not established valid grounds for terminating the tenancy agreement. The Notice is not valid and the Application is allowed. The tenancy agreement between the parties shall continue in full force and effect.

Conclusion

- [21] The Application is allowed.
- [22] The Tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

- A. The Tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 24th day of January, 2024.

(sgd.) Mitchell King
Mitchell King
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.