

Introduction

- [1] On December 29, 2023, the Tenants 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 for occupation by the Landlord and the Landlord’s family.
- [2] Attached with the Application was an *Eviction Notice* (Form 4(B)) (the “Notice”) dated December 27, 2023, effective April 30, 2024. The Notice was given to the Tenants for the following reason:
- I want possession of the rental unit for: myself, my spouse, my child or parent.*
- [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 23, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). A Landlord Representative and the Tenants appeared.

Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [5] In April of 2021 the Tenants and a previous landlord entered into a written month-to-month tenancy agreement for the Residential Property. The Residential Property was purchased by the Landlord in 2023. The Residential Property consists of an apartment in a four-unit building (the “Building”). Rent is \$1,200.00 due on the first day of the month. A security deposit of \$1,200.00 was required and paid.

Landlord’s Evidence and Submissions

- [6] The Landlord submitted two pages of documents into evidence including the Notice and a written submission.
- [7] The Representative stated he is the owner of the Building but it is registered as a numbered company. It is a four-unit building and he is seeking occupation of the top two apartments for his himself, his family, and his parents. The tenants in one of the top apartments are planning to vacate and he requires the Tenants to vacate as well. He recently signed tenancy agreements with the tenants in the bottom two apartments and he does not want to evict them. He signed those tenancy agreements on December 1, 2023, but his personal circumstances changed later that month.
- [8] He owns a house and has a mortgage on that property. Because his wife is currently unable to work, he cannot afford to pay for both the house and the Building. He has a friend who will rent his house and then he will move into one apartment and his parents will move into the other apartment in the Building. The two tenants on the bottom floor will remain in place.

Tenants’ Evidence and Submissions

- [9] The Tenants submitted several pages of evidence including a copy of the tenancy agreement, text messages with a property representative, and a submission from a past tenant of the building. The Tenants stated the Representative should have taken occupancy of the bottom two units in the Building as they had recently been unoccupied.

Analysis

Issue i: Do the Tenants have to vacate the Residential Property due to the Notice?

- [10] The Officer begins by referencing the relevant law for the Application. The Landlord's reasons for requesting to terminate the tenancy agreement are pursuant to subsections 62.(1)(a),(b),(c) of the *Act*, which state:

Landlord's notice for landlord's use of property

62.(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) a landlord;*
- (b) the landlord's spouse;*
- (c) a child, parent or a dependent of the landlord or the landlord's spouse.*

- [11] The Officer notes that in such matters where there is a dispute over a Notice of Termination by Landlord, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice. 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.
- [12] The Officer finds that the Landlord of the Residential Property is a corporation (103153 PEI INC) and as a corporate entity, it is unable to evict the Tenants for possession of the rental unit by the Representative or the Representative's family members.
- [13] Subsection 62.(1) of the *Act* restricts the ability of a landlord to evict a tenant for landlord's use of property. A Landlord may only evict under 62.(1) if the landlord is an "individual." "Individual" is interpreted to mean "natural person" and this excludes corporations from using such a reason for termination.
- [14] Subsection 62.(1) of the *Act* allows a landlord to terminate a rental agreement due to occupation of the rental unit by the landlord, their spouse, children, parents or a person providing care service. Corporations do not have family members. The *Act* does not include a shareholder, director, officer or a family member of a shareholder, director or officer in the list of eligible people who may occupy a rental unit pursuant to subsection 62.(1).
- [15] As a result, the Officer finds that a landlord must be a natural person in order to terminate a rental agreement for landlord's occupation. The Landlord, a numbered company, is a corporation and a corporation cannot terminate a rental agreement pursuant to sub-subsection 62.(1) of the *Act*.
- [16] Therefore, the Officer finds that the Landlord has failed to establish valid grounds to terminate the tenancy agreement under subsection 62.(1) of the *Act*. The Application is allowed and the Notice is invalid. The tenancy agreement between the parties shall continue in full force and effect.

Conclusion

- [17] The Application is allowed.
- [18] 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 25th 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.