

## Introduction

- [1] On January 4, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed pursuant to subsection 61(5) of the *Residential Tenancy Act* (the "Act") to dispute an *Eviction Notice* (Form 4(A)) dated January 3, 2024 effective February 3, 2024 (the "Notice").
- [2] The Notice was served to the Tenants on January 3, 2024 by e-mail for the following reasons:
- *You or someone you have allowed on the property has caused damage to the rental unit;*
  - *You have not repaired damage to the rental unit; and*
  - *You have failed to comply with a material term of the tenancy agreement.*
- [3] All documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with subsection 100(1) of the *Act*.
- [4] On January 25, 2024 a teleconference hearing was held at 1:00 p.m. before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing the Tenants. The Representative appeared, representing the Landlord.

## Issue to be Decided

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

## Summary of the Evidence

- [5] On November 1, 2021 the parties entered into a written fixed term tenancy agreement for the Rental Unit. The fixed term expired on October 31, 2022 and the tenancy agreement continued as a month-to-month agreement. The Rental Unit is situated in an 18-unit building (the "Residential Property"). Rent is \$1,313.40 due on the first day of the month. A security deposit of \$1,250.00 was required and paid.

### Landlord's Evidence and Submissions

- [6] The Representative submitted 21-pages of documents into evidence. Additionally, a screenshot was submitted into evidence (along with a recording from the screenshot) by the Tenant at the request of the Representative.
- [7] The Representative testified that he was notified that the Residential Property's oil tank was empty and he contacted the oil company. The Representative testified that the Tenant informed him on July 11, 2023 by text that there was a leak in the Rental Unit's bathtub. The Representative testified that it was a very bad leak, and that it was happening over many months.
- [8] The Representative testified that the consumption of oil and water was significantly higher. The Representative directed attention to the evidence where an e-mail was sent to the Tenant on December 20, 2023 showing the consumption difference between 2022 and 2023. The Representative testified that the evidence and testimony presented confirms that the leak started in April 2023 and that is when the consumption significantly increased. The Representative testified that once the leak was fixed the consumption numbers returned to normal. The Representative argued this shows that the leak was the primary reason for the increased consumption.
- [9] The Representative admitted that no known damage resulted from the leak. The Representative testified that the Tenant did give him \$500.00 to help cover the increased cost for water/oil. The Representative testified that the cost was \$2,194.68 in total and expected the Tenant to pay that expense. When the Tenant refused, the Representative served the Notice.

### Tenants' Evidence and Submissions

- [10] The Tenants submitted 15 pages of documents into evidence. The Tenant testified that he first noticed the leak in the bathtub in April 2023. The Tenant admitted to not bringing it to the Representative's attention at the time because he believed it was a normal drip. The Tenant testified that in July 2023 he realized that the leak became significantly worse and notified the Representative through text message (the July 11, 2023 text message in evidence).
- [11] The Tenant testified that he paid \$500.00 to the Landlord to assist for the additional cost due to consumption and the leak. The Tenant testified that in December 2023 he received an e-mail from the Representative that demanded an additional \$1,804.68. The Tenant testified that the total cost is attributed to the increase of fuel and water for the entire Residential Property and not to the Rental Unit.
- [12] The Tenant testified that there was no physical damage caused to the Rental Unit due to the leak. Since there was no damage to the Rental Unit, no repairs are required. The Tenant testified that he did delay notifying the Representative about the leak. The Tenant testified that once the issue became more serious he notified the Representative. The Tenant argued that the Landlord has the burden of proof and the evidence presented does not justify a termination of the tenancy. The Tenant argued the evidence does not properly reflect the accurate consumption for the Rental Unit and that correlation does not always mean causation.

### Analysis

- [13] The Application is made in accordance to section 75 of the *Act* and seeks to dispute the Notice. The Landlord is seeking to terminate the tenancy in accordance with clauses 61(1)(f), (g) and (h) of the *Act*. The relevant law is as follows.

**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:*

- (f) *the tenant or person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property;*
- (g) *the tenant does not repair damage to the rental unit or residential property, as required under section 28(4), within a reasonable time; and*
- (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.*

- [14] In such matters where there is a dispute over an *Eviction Notice* it is the landlord's burden to prove, on a balance of probabilities, any and all reasons alleged in the Notice. This means the landlord must provide sufficiently clear, convincing and cogent evidence to support their claim(s).
- [15] In this case, the Landlord seeks to terminate the tenancy because the Tenant allegedly caused damage to the rental unit, did not repair the damage in a reasonable time, and has breached a material term of the tenancy agreement.

**Damage & lack of repairs to Rental Unit**

- [16] The evidence and the testimony provided by the parties concludes that there is no known damage to the Rental Unit. As there is no known damage, no repairs would be required on behalf of the Tenant. Therefore, the Officer concludes that the Landlord has failed to establish valid grounds to terminate the tenancy due to these reasons.

**Breach of a material term of the tenancy agreement**

- [17] The evidence and the testimony provided by the parties establishes that the Tenants have breached a material term of the tenancy agreement. The tenancy agreement was included in the evidence and the Officer refers to Schedule "D" paragraph 7 of the tenancy agreement which states:
- *"Leaking taps, pipes, and running toilets should be reported to the landlord at once for repairs. Any damages from leaks not reported will be charged to the tenants."*
- [18] The evidence establishes through the written submissions and oral testimony of the parties that the Tenant knew about the leak in April 2023. Yet, the Tenant did not inform the Representative until July 11, 2023. Despite the Tenant's reasons for not notifying the Representative immediately, the leak significantly worsened over time. Such findings are a breach of paragraph 7 of the tenancy agreement.
- [19] However, clause 61(1)(h) of the *Act* requires not just a breach of a material term of a tenancy agreement to terminate. It also requires a finding that the Tenant has not corrected the situation within a reasonable time after the Landlord has given written notice. The Officer interprets this clause as a repeated offense/breach by the Tenant where the Landlord has provided warning to the Tenant.
- [20] In this case, the evidence does not suggest that the Tenant has been repeatedly in breach of the *Act* and/or the tenancy agreement. Further, the evidence does not suggest that the Landlord provided any warning to the Tenant as it relates to the breach in question. The Officer notes that this type of breach of the tenancy agreement is less common in circumstances where a warning would be given. Unlike a breach where a tenant may be accused of smoking or having a pet in their rental unit, contrary to the respective tenancy agreement, where a warning would be given to stop smoking and/or remove the pet. Further, in this case the Officer finds that the breach in question, does not reach a level which would justify the termination of the tenancy agreement.
- [21] The Officer finds that the appropriate remedy here for the Landlord is not to terminate the tenancy agreement, but to seek compensation from the Tenant for the breach and the alleged costs associated with the breach. The Landlord would do so by application to the Rental Office pursuant to section 85(1)(d) of the *Act* and/or the Landlord may seek to retain the security deposit at the end of the tenancy by again applying to the Rental Office at that time.
- [22] Therefore, the Officer finds that the Landlord has not established valid ground to terminate the tenancy agreement pursuant to clauses 61(1)(f), (g), and (h)(ii) of the *Act*. The Application is allowed and the Notice is dismissed.

**Conclusion**

- [23] The Application is allowed and the Notice is dismissed.
- [24] The tenancy agreement between the parties shall continue in full force and effect.

**IT IS THEREFORE ORDERED THAT**

- A. The Application is allowed and the Notice is dismissed.
- B. The tenancy agreement between the parties shall continue in full force and effect.

**DATED** at Charlottetown, Prince Edward Island, this 26th day of January, 2024.

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(sgd.) Cody Burke  
Cody Burke  
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.