

Introduction

- [1] On January 11, 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 6, 2024 effective February 6, 2024 (the "Notice").
- [2] The Notice was served to the Tenant on January 6, 2024 by posting it to the Rental Unit's door for the following reason:
- *You or someone you have allowed on the property has caused damage to the rental unit.*
- [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 February 1, 2024 a teleconference hearing was held at 1:00 p.m. before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing themselves. The Representatives appeared, representing the Landlord.

Issue to be Decided

- i. Does the Tenant have the vacate the Rental Unit due to the Notice?

Summary of the Evidence

- [5] In June 2022 the Tenant and the Landlord entered into a written fixed term tenancy agreement for the Rental Unit. The Rental Unit is situated in a 12-unit apartment building (the "Residential Property"). Rent is \$684.51 due on the first day of the month. No security deposit was required.

Landlord's Evidence and Submissions

- [6] The Representatives submitted into evidence photographs of the Rental Unit taken by the Representative on January 6, 2024. The Representative testified that she witnessed a broken (cracked) window in the Rental Unit. The Representative testified that the entire Rental Unit is damaged by the Tenant. There have been on-going issues with the plumbing and the Representatives had a plumber go to the Rental Unit twice to fix the issue.

Tenant's Evidence and Submissions

- [7] The Tenant testified that the plumbing issue has been on-going and any damage caused by the plumbing was due to the Representatives not quickly addressing it. The Tenant denied causing any damage in the Rental Unit. The Tenant characterized the Rental Unit as being old and without repairs for many years. The Tenant testified that he contacted the Representatives on numerous occasions regarding specific issues within the Rental Unit, including, but not limited to, the shower not working for many months.
- [8] The Tenant testified that he has done his best to fix up and clean the Rental Unit but he cannot do anything plumbing related. The Tenant testified that the Representatives attempted to evict him a few months ago over the exact same issues and the Tenant submitted into evidence Rental Office Order LD23-548 dated November 24, 2023.

Analysis

[9] 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 clause 61(1)(f) 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.

[10] 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).

The Effective Date

[11] The Officer notes that the Notice has an effective date of *February 6, 2024*. Clause 61(3) of the *Act* states:

Period of notice

- (3) A notice of termination under this section shall end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received; and
- (b) the day before the day that rent is payable under the tenancy agreement.

[12] As rent is due by the first day of the month, the Officer finds that the effective date of the Notice is automatically changed from February 6, 2024 to February 29, 2024, pursuant to section 54 of the *Act*.

Previous Allegations of Damage to the Rental Unit at Issue

[13] The Officer notes that the Tenant argued that many of the issues brought forward during the Representative's testimony were the same issues brought forward at a previous Hearing before the Rental Office. The Tenant argued that the *Eviction Notice* was dismissed in Order LD23-548. Upon reviewing Order LD23-548, the Rental Officer dismissed the eviction due to the Landlord not providing sufficient evidence.

[14] The Officer notes that *Res Judicata* is a legal principle and a form of estoppel. It operates through the application of two doctrines or species: *cause of action estoppel* and *issue estoppel*. Simply put, issue estoppel precludes the relitigation of issues that a court or tribunal has decided in a prior matter.

[15] This means that the Landlord is estopped from attempting to terminate the tenancy agreement due to the issues that have already been decided.

Damage to the Window

[16] The Officer notes that the alleged damage to the window is a new issue and something that was not at issue in Order LD23-548. However, the Officer finds that the Landlord has not provided sufficient evidence to determine the extent of the damage, cause of the damage and the Officer cannot determine whether such allegations warrant the termination of the tenancy.

[17] Therefore, the Officer finds that the Landlord has provided insufficient evidence to warrant the termination of the tenancy agreement. The Application is allowed and the Notice is dismissed. The tenancy agreement shall continue in full force and effect.

Conclusion

[18] The Application is allowed and the Notice is dismissed.

[19] The tenancy agreement between the parties shall continue in full force and effect.

[20] **Order LD24-042 will be served to the parties by e-mail on February 2, 2024.**

IT IS THEREFORE ORDERED THAT

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

DATED at Charlottetown, Prince Edward Island, this 2nd day of February, 2024.

(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.