

Introduction

- [1] On December 6, 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 an Eviction Notice.
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the “Notice”) dated November 27, 2023, effective December 27, 2023. The Notice was given to the Tenant for the following reasons:
- You or someone you have allowed on the property have disturbed or endangered others;*
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;
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 February 1, 2024, a paper-based hearing was held. The Officer has reviewed the written submissions of the parties and the documentary evidence.

Issue to be Decided

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

Summary of the Evidence

- [5] On November 1, 2020, the parties entered into a written fixed-term tenancy agreement for the Residential Property. Rent is \$1,160.00 due on the first day of the month. A security deposit of \$1,100.00 was required and paid.

Landlord’s Evidence and Submissions

- [6] The Landlord submitted several pages of documents into evidence including a written submission, correspondence with a pest control company, and correspondence between the parties.
- [7] The Landlord stated the rental unit is cluttered and the Tenant was asked to clean the rental unit several times, but he has failed to do so. In the summer of 2023, tape was observed on the electrical sockets during an inspection and the Tenant stated it was because there were cockroaches in the rental unit. The Tenant never informed the Landlord he had an issue with cockroaches until questioned by the Landlord. There are approximately 30 plants in the rental unit and there is garbage on the balcony making the balcony inaccessible.
- [8] On November 23, 2023, the Tenant was given notice that the rental unit would be treated the next day by a pest control company for cockroaches. On November 24, 2023, the Tenant did not allow the pest control company to open any doors in the rental unit to be able to apply the treatment. The invoice from the pest control company for that visit stated “*having a difficult time with tenants in [the rental unit] with a large amount of clutter including a room that i can’t access because you can only open the door 6 inches as there is clutter all the way to the ceiling and the living room has a lot of clutter.*”

- [9] On November 30, 2023, the Tenant was given a notice that the pest control company would be attending on December 1, 2023, for a treatment and to have the kitchen and cabinets accessible and to allow access the walls of the rental unit. The Representative stated the Tenant did not prepare the rental unit and the technician was faced with the same situation as with the prior visit.
- [10] The pest control company's invoice from December 1, 2023, stated "*[the rental unit] still has a large amount of clutter through out the unit so I couldn't do a treatment again after 3 attempts.*" The Representative submitted that the photos and video submitted by the Tenant do not show the living room or the master bedroom which were not accessible at all by the technician, which is stated in the technician's report.
- [11] The Representative stated the pest control company was unable to spray the rental unit again on December 19, 2023, because the rental unit was not properly prepared. The rental unit was never able to be properly sprayed due to the Tenant not properly preparing the rental unit.

Tenant's Evidence and Submissions

- [12] The submitted several documents and videos into evidence including written submissions and messages between the parties.
- [13] The Tenant stated the Landlord is asking the Tenant to do things which are not "feasible," with regards to preparing the rental unit for spraying. He stated he had complied with the pest control company's orders but the spraying did not take place. He submitted photographs of his kitchen dated November 17, 2023, showing empty cupboards and items piled in the middle of the floor.
- [14] He stated on November 15, 2023, the rental unit was completely inspected and sprayed. It was not until November 23, 2023, that the issue of any mess in the bedroom was brought up, which caused the rental unit not to be sprayed at that time. He stated the pest control company did not attend the rental unit on November 23, 2023, or on December 15, 2023.
- [15] The Tenant stated there are contradictions in the pest control company's invoices and messages. There are errors in the number of rental units they inspected and there are errors in whether it was for a second or third spray. The Tenant stated the Landlord and the pest control company are working together to try to have him evicted and some of the invoices are faked.
- [16] The Tenant submitted that the Landlord did not provide a warning before issuing the eviction notice regarding the clutter in the bedroom being an issue. He stated there was no clutter prior to the start of the pest control spraying.
- [17] The Tenant submitted a video from December 1, 2023, which shows the Representative and a pest control technician speaking with the Tenant in the rental unit. The technician is seen leaving the rental unit without spraying and the technician states the rental unit was not ready as he could not access the bedroom.

Analysis

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

[18] 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)(d),(f),(g),(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:

(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;

(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;

(g) the tenant does not repair damage to the rental unit or residential property, as required under section 28(4), within a reasonable time;

(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.

[19] 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).

[20] After reviewing the documentary evidence and the submissions of the parties, specifically the documentary evidence of the Landlord and the video evidence of the Tenant, the Officer finds that the Landlord has established that the Tenant has breached subsection 61.(1)(d) of the *Act*. The Officer finds that by failing to properly prepare the rental unit for pest control spraying, 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.

- [21] The Officer specifically notes the video evidence submitted by the Tenant. In the video from December 1, 2023, the technician leaves the rental unit without spraying and states the rental unit was not ready as he could not access the bedroom. The Representative states to the Tenant it was the third time they have attempted to spray. The Tenant then follows the Representative and the technician out of the building to the parking lot while filming. The Tenant states “three times you come and no spray.” In the video, the Tenant can be seen filming everywhere in the rental unit except the bedroom which the technician stated has not been prepared.
- [22] The Officer does not find that the Landlord has provided sufficient evidence to establish that the Tenant has breached subsections 61.(1)(f),(g),(h), or (j) of the *Act*.
- [23] The Officer finds that based on the evidence presented the Landlord has established valid grounds for terminating the tenancy agreement. The Notice is valid and the Application is denied.

Conclusion

- [24] The Notice is valid and the Application is denied.
- [25] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on February 29, 2024. The Tenant and all occupants shall vacate the Residential Property by this time and date.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on February 29, 2024. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- B. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 9th day of February, 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 **7 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.