

## Introduction

- [1] On January 29, 2024, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks an earlier termination of the tenancy agreement and granting the Landlord possession of the rental unit pursuant to clauses 61(7)(a) and (b) of the *Residential Tenancy Act* (the "Act").
- [2] Attached to the Application was an Eviction Notice (Form 4(A)) (the "Notice") dated January 4, 2024, effective January 25, 2024, directed to the Respondent and the former tenant ("C.W."). The Notice was served on January 4, 2024, and was given to the parties for the following reasons:
- You have not paid the security deposit;*  
*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 have failed to comply with a material terms of the tenancy agreement.*  
*You have sublet the rental unit without the landlord's consent.*
- [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] A teleconference hearing was held on February 9, 2024, before a Residential Tenancy Officer (the "Officer"). The Landlord appeared but the Respondent did not participate.

## Issue to be Decided

- i. Is an earlier termination of the tenancy agreement warranted?

## Summary of the Evidence

- [5] In November 2022, the Landlord and C.W. entered into a written fixed-term tenancy agreement for the rental unit, which is located in a four-unit building. Rent was \$1,180.00 due on the first day of the month. A security deposit was paid but the Landlord could not remember how much it was.
- [6] C.W. vacated the rental unit pursuant to the Notice around January 20, 2024. The Respondent had moved into the rental unit with C.W. in the summer of 2023 without the Landlord's permission. The Respondent did not vacate the rental unit when C.W. vacated.

### Landlord's Evidence and Submissions

- [7] The Landlord submitted a written submission and numerous videos into evidence.
- [8] The Landlord stated C.W. vacated the rental unit pursuant to the Notice around January 20, 2024. The Respondent had moved into the rental unit with C.W. in the summer of 2023 without the Landlord's permission. The Respondent did not vacate the rental unit when C.W. vacated. The Landlord stated he never signed a tenancy agreement with the Respondent and wants the Respondent out of the rental unit. The Respondent also has several other people living there without the Landlord's permission. No rent has been paid for February 2023.
- [9] The tenants in unit 3 across from the rental unit had a tv stolen in December 2023. The Landlord installed security cameras in the area after that incident. In January 2024 the tenants in unit 3 returned home to find their unit had been broken into and several items had been stolen. The Landlord reviewed the security footage and found the incident occurred on January 23, 2024.

- [10] On January 23, 2024, the security footage shows the Respondent letting two individuals into the building and they enter the rental unit. The individuals then go out of the building and come back in with their faces covered. The individuals go into unit 3 and then come back out with what appear to be full backpacks. The Landlord has given the police copies videos and also submitted the videos into evidence for this hearing.
- [11] The Respondent and C.W. have a no contact order. On January 15, 2024, police attended the rental unit and escorted both parties out of the building because they were not supposed to be together. The Landlord stated there was a domestic disturbance incident between the Respondent and C.W. in the summer of 2023. The Landlord submitted videos of the January 15, 2023, incident into evidence.
- [12] Police were recently required to break in the door of the rental unit for a wellness check on the Respondent. The Landlord gave permission to the police to break the door in and now the door needs to be replaced. A copy of this video was submitted into evidence.
- [13] Other tenants in the building are frequently complaining to the Landlord about the number of people who are coming and going from the rental unit and that police are often there. Individuals will enter the building looking for the Respondent or yell out the Respondent's name. The Landlord stated multiple individuals can be observed on video coming and going from the rental unit daily and some appear to be high on drugs. Some of the videos were submitted into evidence.
- [14] On December 29, 2023, the Respondent told the Landlord he destroyed the lockbox which was installed for pest control and contractors to gain access to building. The Landlord also asked about the shed lock which had been changed and the Respondent stated he replaced it with his own lock.

#### **Respondent's Evidence and Submissions**

- [15] The Respondent did not submit any evidence or participate in the hearing.

### **Analysis**

#### **Issue i. Is an earlier termination of the tenancy agreement warranted?**

- [16] The Application is made in accordance to section 75 of the *Act* and seeks an earlier termination of the tenancy agreement pursuant to clauses 61(7)(a) and (b). The relevant law is as follows:

##### ***Landlord may request earlier termination date***

- (7) *Despite subsection (3), a landlord who wishes to give notice of termination under subsection (1) may make an application to the Director to request an order*
- (a) *ending a tenancy agreement on a date that is earlier than the tenancy would end if the notice of termination were given under subsection (1); and*
- (b) *granting the landlord an order of possession in respect of the rental unit.*

##### ***Requirements for earlier period of notice***

- (8) *The Director shall grant an application under subsection (7) only if the Director is satisfied that*
- (a) *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,*
- (iv) *engaged in illegal activity that*
  - (A) *has caused or is likely to cause damage to the landlord's property,*
  - (B) *has adversely affected or is likely to adversely affect the equity enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
  - (C) *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord,*
- (v) *caused unreasonable damage to the residential property, or*
- (vi) *frustrated the tenancy agreement; and*
- (b) *it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice of termination under subsection (1) to take effect.*

[17] The Application seeks a determination that the tenancy agreement ought to be terminated earlier than what would generally be required for a for-cause eviction. In such applications, it is the Landlord's burden to prove, on a balance of probabilities, the two requirements set out in clauses 61(8)(a) and (b). This means the Landlord must provide sufficiently clear and convincing evidence that first the Tenant/Respondent or a person permitted on the Residential Property has breached one of the listed items in clause 61(8)(a). Second, the Landlord must establish that it would be unreasonable or unfair to the landlord or other occupants of the Residential Property to wait for a notice of termination to take effect as required by clause 61(8)(b).

[18] The Officer notes that the Landlord was aware the Respondent had moved into the rental unit with C.W. in the summer of 2023. However, the Landlord did not request the Respondent vacate the rental unit or serve an eviction notice at that time. This acquiescence of the Landlord allowed the Respondent to become either a co-tenant with C.W. or a sub-tenant of C.W. Also, both the Respondent and C.W. were named on the original eviction notice, which further denotes the co-tenancy or sub-tenancy of C.W. and the Respondent. As the Respondent did not vacate the rental unit by the vacate date, he would now be considered an overholding co-tenant or sub-tenant at this time, as the tenancy agreement has since terminated.

### **The First Requirement**

[19] The Officer is satisfied that the Landlord has established the requirements prescribed in clause 61(8)(a) have been met. The Officer finds the Landlord has submitted sufficient evidence, specifically the undisputed testimony of the Landlord and the Landlord's documentary and video evidence, to establish that the Respondent and individuals allowed into the building and the rental unit by the Respondent have:

- (1) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and*
- (2) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and*
- (3) *put the landlord's property at significant risk, and*
- (4) *engaged in illegal activity that*
  - (A) *has caused or is likely to cause damage to the landlord's property,*
  - (B) *has adversely affected or is likely to adversely affect the equity enjoyment, security, safety or physical well-being of another occupant of the residential property, or*

- (C) *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord, and*
- (5) *caused unreasonable damage to the residential property.*

### **The Second Requirement**

- [20] After considering the facts of this case and reviewing the documentary evidence and the testimony of the Landlord, the Officer finds that the Landlord has established the second requirement. The Officer finds that due to the seriousness of the alleged occurrences by the Respondent and the individuals the Respondent is permitting into the rental unit and building, it would be unfair or unreasonable to the Landlord or the other occupants of the building to wait longer for an eviction. Therefore, the Officer is satisfied that the Landlord has established the requirement prescribed in clause 61(8)(b).
- [21] The Officer finds the Landlord has established valid grounds for an earlier termination of the tenancy agreement and the Application is allowed. The tenancy agreement shall terminate effective February 16, 2024, at 5:00 p.m.

### **Conclusion**

- [22] The Application is allowed.
- [23] The tenancy agreement shall terminate effective February 16, 2024, at 5:00 p.m. The Respondent and all occupants shall vacate the Residential Property by this date and time.

### **IT IS THEREFORE ORDERED THAT**

- A. The tenancy agreement shall terminate effective February 16, 2024, at 5:00 p.m. The Respondent and all occupants shall vacate the Residential Property by this date and time.
- 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.