

Introduction

- [1] On February 7, 2024, 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"), effective February 29, 2024. The Notice was given to the Tenant for the following reasons:

You or someone you have allowed on the property have engaged in illegal activity on the property;

You have failed to comply with a material term of the tenancy agreement.

- [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 20, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Landlord Representative and the Tenant participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [5] In 2020, the Tenant and the Landlord entered into a written fixed-term tenancy agreement which then converted to a month-to-month agreement for the Residential Property. The Tenant had been living in the rental unit since 2013 and had an agreement with a previous landlord. Rent is \$883.57 due on the 1st day of the month. A security deposit of \$600.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord submitted several pages of documents into evidence including videos and photographs of the rental unit, messages between the parties, and submissions from other tenants in the building. The Representative stated the rental unit is very dirty, cluttered, and filled with garbage. She has warned the Tenant several times to clean the rental unit but it is still unclean. The Representative stated the smell from the rental unit can be smelled in the hallway.
- [7] The Representative has been trying to get access to the rental unit to spray for cockroaches but the Tenant will not clean the rental unit and will not allow the Landlord access to spray. There have been other times when the Representative has required access to the rental unit for inspections or work, but the Tenant has given several reasons to deny entry to the rental unit.
- [8] The Representative stated she has received several written complaints from other tenants in the building who stated they can smell cigarette and marijuana smoke coming from the rental unit. The photographs and videos submitted show tools for consuming marijuana and there are cigarette butts in the rental unit. These actions are unsafe and may put other tenants at risk of fire and it is a smoke-free building.

Tenant's Evidence and Submissions

- [9] The Tenant submitted several documents into evidence including messages between the parties and a written statement. The Tenant stated she is having some mental health challenges and is having a hard time keeping the rental unit clean. The Landlord has been understanding in the past and she is asking for more time to work with the Landlord to clean the rental unit.
- [10] The Tenant stated she has not smoked inside the rental unit for the past year. She stated other tenants smoke in their units so the smell of smoke would not just be coming from her rental unit. She denied doing anything illegal in the rental unit. She stated she lets the Landlord know if she will be late with rent. She stated the previous landlord allowed pets and the Representative was aware she had pets.

Analysis

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

- [11] The Officer begins by referencing the relevant law for the Application. The Act states:

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:

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property;

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant.

(h) the tenant

(i) had 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.

28. Tenant responsible for ordinary cleanliness

(3) A tenant is responsible for

(a) ordinary cleanliness of the rental unit and all areas of the residential property used exclusively by the tenant, except to the extent that the tenancy agreement expressly requires the landlord to clean it.

- [12] 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).

Issue i: Cleanliness

- [13] The Officer finds that the Landlord has provided sufficient evidence, specifically the videos and photographs submitted by the Landlord, to establish that the Tenant has breached subsection 60.(1)(h) of the *Act*. The Officer finds the Tenant has failed to maintain the ordinary cleanliness of the rental unit and has not corrected the situation within a reasonable time after the Landlord has given written notice to do so. The Officer finds that based on the evidence presented the Landlord has established valid grounds for terminating the tenancy agreement.

Issue ii: Illegal activity

- [14] After reviewing the documentary evidence and testimony of the parties, the Officer does not find that the Landlord has provided sufficient evidence to establish that the Tenant has breached subsection 61.(1)(e) of the *Act*. The Officer does not find that the Landlord has established the Tenant or someone the Tenant the permitted on the Residential Property by the Tenant has engaged in illegal activity on the property.

Conclusion

- [15] The Notice is valid and the Application is denied.
- [16] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on March 31, 2024. The Tenant 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 March 31, 2024. The Tenant 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 22nd 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.