

Introduction

- [1] On February 21, 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 that the Tenant vacate the Rental Unit, and to order the Sheriff to put the Landlord into possession of the Rental Unit pursuant to clause 51(4)(b) of the *Residential Tenancy Act* (the "Act").
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated December 18, 2023 for effect January 18, 2024. The Notice was given to the Tenant for the following reasons:
- i. *You or someone you have allowed on the property have disturbed or endangered others;*
 - ii. *You or someone you have allowed on the property has caused damage to the rental unit;*
 - iii. *You have not repaired damage to the rental unit.*
- [3] All relevant documents (including the Application, *Notice of Hearing* and *Evidence Package*) were properly served in accordance with clause 100(1) of the *Act*.
- [4] On March 7, 2024 a teleconference hearing was held at 9:00 a.m. before a Residential Tenancy Officer (the "Officer"). A representative appeared on behalf of the Landlord (the "Representative"). The Tenant did not appear and did not have representation.

Issue to be Decided

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

Summary of the Evidence

- [5] Approximately five years ago the parties entered into a written month-to-month tenancy agreement for the Rental Unit. The Rental Unit is situated in a triplex (the "Residential Property"). Rent is \$690.00 due on the first day of the month. No security deposit was required.

Landlord's Evidence and Submissions

- [6] The Representative testified that he received numerous complaints from other tenants in the Residential Property about noise coming from the Rental Unit late at night. The Representative testified that the Tenant's animals has caused significant damage to the Rental Unit's walls and floors. The Representative testified that the Tenant will not allow him to enter the Rental Unit to inspect fully the Rental Unit. The Representative testified that he witnessed some of the damage to the Rental Unit from the entrance of the Rental Unit when he speaks with the Tenant.
- [7] The Representative testified that he served the Notice on December 18, 2023 by hand delivering it to the Tenant. The Representative testified that the Tenant repeatedly tells him that she will vacate the following week, but continues to live in the Rental Unit. The Representative testified that he served the Tenant with the evidence package by hand delivery.

Tenant's Evidence and Submissions

- [8] The Tenant did not submit any evidence, written submissions and did not participate at the hearing.

Analysis

[9] The Application is made in accordance with clause 75 of the *Act* and seeks an order directing the Tenant to vacate the Rental Unit and ordering the Sheriff to put the Landlord into possession of the Rental Unit. The relevant law is as follows:

51. Termination only in accordance with Act

(1) *A tenancy shall be terminated only in accordance with this Act.*

Landlord's right to possession restricted

(4) *A landlord shall not retain possession of a rental unit unless*

(a) *the tenant has vacated the rental unit or has abandoned the rental unit in accordance with section 42; or*

(b) *the Director has made an order directing the tenant to vacate the rental unit and the order has been sent to the sheriff for enforcement.*

[10] On December 18, 2023 the Representative served the Tenant with the Notice seeking to terminate the tenancy agreement pursuant clauses 61(1)(d)(f) and (g) of the *Act*, which 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:*

(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, or*

(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.*

[11] In such matters it is the landlord's burden to prove, on a balance of probabilities, any and all reasons alleged in the Notice, and any and all claims made in the Application. This means the Representative must provide the decision-maker with sufficiently clear, convincing and cogent evidence to support their claims.

The Effective Date

[12] The Officer begins by noting that the Notice has an effective date of *January 18, 2024* to end the tenancy agreement. However, the Officer notes that 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.*

- [13] As rent is due on the first day of the month, the Officer finds that the correct effective date for the Notice is January 31, 2024. As the Application was filed on February 21, 2024 and the Tenant continues to live in the Rental Unit, this fact does not negatively impact the Application.

The Notice – Cause for Eviction

- [14] The Officer finds that the direct evidence provided by the Representative establishes that the Tenant has interfered and/or unreasonably disturbed other tenants in the Residential Property. Further, the Officer finds that the Representative provided direct oral testimony to witnessing the damage to the Rental Unit caused by the Tenant and/or the Tenant's pets. Therefore, the Officer finds that the Landlord properly served the Eviction Notice and had valid grounds to terminate the tenancy agreement pursuant to clause 61(1) of the *Act*.

Deeming Provisions

- [15] Further, the Officer notes that there is no evidence to suggest that the Tenant filed an application with the Rental Office within (10) ten days of receiving the Notice to dispute it. The Tenant has not vacated the Rental Unit by the effective date of the Notice. Clauses 61(5) and (6) of the *Act* states:

Tenant may dispute notice

- (5) *A tenant may dispute a notice of termination under this section by making an application to the Director under section 75 within 10 days after the date the tenant receives the notice.*

Tenant presumed to accept notice

- (6) *Where a tenant who has received a notice of termination under this section does not make an application to the Director in accordance with subsection (5), the tenant*
- (a) *is deemed to have accepted that the tenancy ends on the effective date of the notice of termination; and*
- (b) *shall vacate the rental unit by that date*

- [16] The evidence establishes that the Representative served the Notice on December 18, 2023. The Tenant had (10) ten days to file an application (Form 2(A)) with the Rental Office to dispute the Notice. The evidence establishes that the Tenant did not file an application with the Rental Office. Therefore, the Tenant is **deemed** to have accepted the Notice and to vacate the Rental Unit by the effective date on the Notice.

- [17] The Officer concludes that the Notice is valid and the Application is allowed.

- [18] Clause 85(1)(f) of the *Act* states:

85. Powers of the Director

- (1) *After hearing an application, the Director may make an order*
- (f) *directing a tenant to vacate the rental unit on a specified date.*

- [19] The Officer finds that the tenancy shall end, and the Tenant shall vacate the Rental Unit on or before **March 14, 2024 at 5:00 p.m.**

Conclusion

[20] The Notice is valid and the Application is allowed.

[21] The tenancy shall end, and the Tenant shall vacate the Rental Unit on or before **March 14, 2024 at 5:00 p.m.**

IT IS THEREFORE ORDERED THAT

- A. The tenancy shall end, and the Tenant shall vacate the Rental Unit on or before March 14, 2024 at 5:00 p.m.
- 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 8th day of March, 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 **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.