

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 vacant possession of the Unit and an order for the Sheriff to put the Landlord in possession.
- [2] Attached to the Application was an *Eviction Notice (Form 4(A))* dated December 18, 2023 for effect on January 18, 2024 (the “Notice”), which contained the following reasons for termination:

*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;
and
You have not repaired damage to the rental unit.*

- [3] On February 23, 2024 the Rental Office mailed the parties notice of a teleconference hearing scheduled for March 7, 2024.
- [4] On March 4, 2024 the Rental Office emailed the Landlord an evidence package and the Landlord was requested to serve the Tenant with a copy of the evidence package.
- [5] On March 7, 2024 the Landlord participated in an earlier teleconference hearing before another Residential Tenancy Officer. The Tenant did not participate in this earlier hearing.
- [6] On March 8, 2024 Order LD24-078 was issued, ordering as follows:

- “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.*”

- [7] On March 14, 2024 the Tenant appealed Order LD24-078 to the Island Regulatory and Appeals Commission (the “Commission”).
- [8] On April 19, 2024 the Rental Office advised the parties that Order LD24-078 contained an obvious error or inadvertent omission because the earlier decision maker had inadvertently characterized the Tenant’s written evidence as the Landlord’s evidence. Therefore, the hearing would be re-opened pursuant to section 88 of the *Residential Tenancy Act* (the “Act”). The parties were provided with the teleconference hearing instructions.
- [9] On April 25, 2024 the Landlord and the Tenant participated in a re-opened Rental Office teleconference hearing before the Residential Tenancy Officer (the “Officer”).

Issue to be Decided

- [10] The purpose of this Order is to correct the error in Order LD24-078. The Officer must determine whether correcting the error in Order LD24-078 changes the outcome. The issue remains:
- i. Does the Tenant have to vacate the Unit due to the Notice?

Preliminary Matter

- [11] The Landlord is a sole proprietor and the Tenant’s middle name ends with an “e.” The style of cause has been updated accordingly.

Summary of the Evidence

- [12] The Unit is located in a triplex building (the “Residential Property”) that the Landlord purchased approximately fifteen years ago.
- [13] The Landlord and the Tenant entered into a month-to-month tenancy agreement for the Unit. Rent in the amount of \$690.00 is due on the first day of the month. No security deposit was paid.
- [14] Order LD24-078 states that the tenancy started approximately five years ago.

Landlord’s Evidence and Submissions

- [15] At the re-opened hearing, the Landlord stated that his evidence is properly summarized at paragraphs [6] and [7] of Order LD24-078, which state as follows:

“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.

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.”

- [16] At the re-opened hearing the Landlord provided testimony regarding telephone calls he received from the Tenant early in the morning on February 17, 2024. At that time the Tenant told the Landlord that she was hearing sounds and bangs and she did not know what they were.
- [17] The Landlord stated that he has received numerous calls from other tenants of the Residential Property with noise complaints against the Tenant.

Tenant’s Evidence and Submissions

- [18] In Order LD24-078 the earlier decision maker noted that the Tenant did not provide any evidence to dispute the Notice. However, on March 1, 2024 the Tenant did in fact file seven pages of hand-written notes with the Rental Office via Access PEI. In this written evidence the Tenant disputes that she is causing problems at the Residential Property. With regard to the Landlord’s complaints, the Tenant stated *“this is all the other way around!”*
- [19] The Tenant’s testimony at the re-opened hearing is summarized as follows.
- [20] The Tenant stated that she did not call into the earlier March 7, 2024 teleconference hearing because she was advised by the Rental Office that she would receive a telephone call for the hearing from the Rental Office. The Tenant stated there was also a water leak in her Unit around the time of the earlier hearing.
- [21] The Tenant stated that she has lived in the Unit since near the end of January of 2016, over eight years ago.

- [22] The Tenant stated that on December 22, 2023 the Landlord served her with the Notice. The Tenant stated that in February of 2024, two to three weeks before the Landlord filed the Application, she filed a Form B or Form A with the Rental Office through Access PEI.
- [23] The Tenant stated that she completed the seven pages of written evidence that were submitted to the Rental Office on March 1, 2024. The Tenant stated that it is other occupants of the Residential Property that are causing problems, not the Tenant.
- [24] The Tenant stated that she telephoned the Landlord regarding the neighbour's son turning up the heat in the basement. The Tenant stated that there are termites in the Residential Property. The Tenant stated that people are stealing from her and spying on her.
- [25] The Tenant stated that she is new to these types of rental disputes.

Analysis

Deeming Provisions

- [26] For the reasons below, the Officer finds that the outcome of Order LD24-078 changes when the seven pages of written evidence are properly identified as the Tenant's evidence.
- [27] Subsections 61(5) and (6) of the *Act* contain deeming provisions when a tenant does not file an application disputing a notice of termination served for cause (subsection 61(1)). These deeming provisions state:

(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.

(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.

- [28] The British Columbia Court of Appeal¹ made the following comment regarding similar provisions of British Columbia's residential rental legislation:

"In my view, the Legislative Assembly has clearly and expressly stated that a tenant's failure to respond within the statutory time limits to a notice given in accordance with either s. 46(4) or s. 47(4) will, by operation of law, bring a tenancy to an end and entitle the landlord to regain possession of the rental unit..."

- [29] The Officer is not aware of any application filed by the Tenant disputing the Notice. The Officer notes that the Tenant did submit duplicate copies of the Landlord's Application, which accompanied the seven pages of written evidence prepared by the Tenant.
- [30] However, the Officer notes that there are exceptions to deemed acceptance of a notice of termination, even when a tenant has not applied to dispute the notice. In the cases summarized below, as in this case, the tenants had provided evidence opposing the termination of their tenancy.
- [31] Subsections 61(5) and (6) of the *Act* are similar to subsections 16(1), (2) and (3) of the *Rental of Residential Property Act* (the "*RRPA*")², the former residential rental legislation on Prince Edward

¹ *Ganitano v. Metro Vancouver Housing Corporation*, 2014 BCCA 10, at paragraph [44].

² *Rental of Residential Property Act*, RSPEI 1988, R-13.1.

Island. Under this former legislation a problem in the notice itself or service of the notice was a defence against deemed acceptance of the notice.

- [32] The Appeal Division of Prince Edward Island's Supreme Court³ considered an appeal of Commission Order LR02-05, a case where a tenant had not filed an application disputing a notice of termination. On appeal, an issue was raised with the notice of termination because the reason for ending the tenancy appeared to conflict with the *RRPA*. The Appeal Division stated as follows:

"...If the "rules" that were violated by the lessee are contrary to the legislation, there may not be cause for the termination of the lease and then the Commission would have no jurisdiction to approve a Notice of Termination."

- [33] In Order LR08-08 the Commission found that it would be unfair to deem that a tenant had accepted a notice of termination because the notice did not set out the particulars of termination. Therefore, the tenant did not have the information necessary to make an informed decision to respond to the notice.

- [34] In Order LR21-21 the Commission found that a notice of termination was invalid because it had not been served in accordance with the *RRPA*. The tenant in this case had not filed an application disputing the notice of termination.

- [35] In Order LR23-79, a recent decision made pursuant to the *Residential Tenancy Act*, the Commission found that a notice of termination was invalid even though the tenant had not filed an application disputing the notice. The Commission stated in part as follows:

"Upon receiving the eviction notice from the Landlord, the Tenants did not file a section 75 application using a Form 2A to challenge the termination of the tenancy agreement. Subsection 61.(6) of the Act provides that unless a tenant disputes a notice of termination within 10 days of receipt, the tenant is deemed to accept the termination and must vacate."

The Director's form for a notice of eviction is not clear in terms of how a Tenant goes about disputing a notice of eviction. The Tenants did not vacate and from that fact alone, together with the materials filed and evidence given, it is clear that the Tenants dispute the eviction. Further, the Director and the Commission have in the past considered the merits of the eviction upon considering an application for possession, where a Tenant challenges the validity of an eviction. Therefore, the Commission will look at the circumstances of the eviction to determine if sufficient grounds were present to justify an eviction."

- [36] The standard wording in the Notice used by the Landlord also does not state the procedure the Tenant would need to follow to dispute the Notice. The standard wording only states: *"Tenants have ten (10) days to dispute this Eviction Notice."* The form does not have a section for the particulars of termination. The Officer notes that Commission Order LR23-79 was issued on or about the date that the Notice was served, which was the standard notice of termination form at that time.

- [37] In Order LD24-078, the previous Rental Office decision between the Landlord and the Tenant, the Tenant's written evidence was inadvertently characterized as part of the Landlord's evidence. The earlier decision maker stated that there was no evidence provided by the Tenant (paragraph [8]).

- [38] When the seven pages of written evidence are properly identified as the Tenant's evidence, it is clear to the Officer that the Tenant is in fact disputing the Notice. Based upon the reasoning quoted above from Order LR23-79, the Officer cannot find that the Tenant is deemed to have accepted the Notice. Instead, the Officer must determine if sufficient grounds were present to justify eviction.

³ *Darville v. MacRae Holdings Ltd.*, 2003 PESCAD, at paragraph [13].

Evidence Supporting the Notice

- [39] The Landlord seeks to end the tenancy in part because the Tenant has disturbed or endangered others. No written statements or correspondence from the other occupants of the Residential Property was submitted into evidence and these occupants did not participate in the March 7, 2024 or April 25, 2024 hearings. The Landlord has only provided hearsay evidence regarding the complaints against the Tenant that he received from other occupants.
- [40] The best practice is for a landlord to have the complaining occupants participate in the Rental Office teleconference hearing. The occupants would solemnly affirm to tell the truth, provide their testimony and be available to answer questions regarding their evidence. A landlord should also submit documents to the Rental Office in advance of the hearing that would be referred to by the occupants during the hearing.
- [41] The Landlord provided some evidence of telephone calls he received early in the morning from the Tenant. However, the evidence does not establish that the Tenant is telephoning the Landlord late at night or early in the morning on an ongoing basis.
- [42] The Landlord has claimed that the Tenant has denied the Landlord access to the Unit but no written notices to enter the Unit were submitted into evidence.
- [43] The Landlord has claimed that the Tenant has damaged the Unit. However, no photographs or videos of the alleged damage were submitted into evidence. The Landlord only provided some evidence of what he saw when the Tenant opened the Unit's door.
- [44] In light of the Tenant's written evidence opposing the end of her tenancy, the Officer finds that insufficient evidence has been presented to justify eviction.

Conclusion

- [45] The Notice is invalid and the Application is denied.
- [46] The Officer notes that the *Eviction Notice (Form 4(A))* standard form has been updated to include a section for particulars of termination and the standard wording at the top of the document now states: "*Tenants have ten (10) days to dispute this Eviction Notice by Filing a Form 2(A) Tenant Application with the Rental Office.*"
- [47] The Officer also notes that it is the responsibility of the parties to call into Rental Office teleconference hearings. If a landlord or tenant is having difficulty connecting to a hearing, then the party should immediately call and email the Rental Office to report any technical issues.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid and the Application is denied.
2. The tenancy agreement is in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 3rd day of May, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
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.