

Introduction

- [1] On March 1, 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 January 24, 2024, for effect February 24, 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.*
- [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 12, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord appeared as well as a Landlord witness. The Tenant did not participate in the hearing 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] On November 11, 2023, the parties entered into a written fixed-term tenancy agreement for the Rental Unit. The Rental Unit is situated in a two-unit building (the "Residential Property"). Rent is \$1,350.00 due on the first day of the month. A security deposit of \$1,000.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord testified the Tenant lives in the upstairs unit of the Residential Property and he has received several complaints from the tenants who live in the downstairs unit, one of whom is the Landlord's witness. The witness has told the Landlord the Tenant's fire alarm has gone off several times which has caused the witness and her family to evacuate the Residential Property with their child during the night.
- [7] The Landlord submitted videos of individuals coming and going from the Rental Unit who can be seen smoking, which the Landlord stated is a breach of the tenancy agreement. The Landlord submitted photographs showing the Tenant is accumulating a large amount of garbage outside of the Rental Unit. He also submitted photographs of the outside of the Rental Unit which show the main door to the Rental Unit is damaged and the window screens for the Rental Unit have been damaged or removed.
- [8] The Landlord received a written complaint from a neighbor who lives next door to the Residential Property. The Landlord summarized this neighbor's complaint as follows: The neighbor stated three individuals tried to gain entry to his property but after being confronted, the individuals stated they were mistaken and thought it was the Rental Unit. The neighbor also told the Landlord there is garbage strewn across the backyard of the Residential Property and it is encroaching on the neighbor's property.

- [9] The Landlord received a written complaint from a neighbor who lives across from the Residential Property. The Landlord summarized this neighbour's complaint as follows: The neighbor stated her children have observed drug use outside of the Rental Unit and she has called police several times because of the actions of the Tenant and the Tenant's visitors. The neighbour has observed Police retrieving used needles from the yard of the Residential Property.

Landlord's Witness Testimony

- [10] The Landlord's witness participated in the hearing and testified she lives in the unit below the Rental Unit. She stated the Tenant's fire alarm has gone off several times during the night and she and her family had to evacuate the Residential Property as a result. When they checked on the Tenant's well-being, the Tenant either ignored them, told them the alarm was due to lighting candles, or from performing a cultural ritual. The witness stated their child is now afraid of fire alarms and does not want to sleep.
- [11] The witness stated she can smell cigarette smoke coming from the Rental Unit and there is a large amount of garbage accumulating in the back yard as a result of the Tenant. She stated she can often hear swearing, thumping, guitar playing, and screaming coming from the Rental Unit at all hours. She has called police several times because of the noise coming from the Rental Unit.
- [12] The witness stated it appears as if multiple people have moved in with the Tenant and some of these individuals have been peeking through the windows of the witnesses' unit. One of the individuals keeps knocking on the witnesses' door asking for spare change, food, or toilet paper. These individuals can be heard swearing and will walk around the property holding sharpened sticks. She stated she once heard a loud noise when she was inside of her car when one of these individuals walked past. She inspected the car and found a small hammer on the ground beside the car.

Tenant's Evidence and Submissions

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

Analysis

- [14] 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.*

- [15] On January 24, 2024, a representative of the Landlord served the Tenant with the Notice seeking to terminate the tenancy agreement pursuant clauses 61(1)(d) and (f) 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.*

[16] 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 Landlord must provide the decision-maker with sufficiently clear and convincing evidence to support their claims.

Issue i: Does the Tenant have to vacate the Rental Unit due to the Notice?

[17] After reviewing the documentary evidence and testimony of the parties, the Officer finds that the Landlord has provided sufficient evidence to establish that the Tenant or a person permitted on the Residential Property by the Tenant, has breached subsections 61.(1)(d) and (f) of the Act. The Officer finds these breaches of the Act are significant enough to terminate the tenancy agreement between the parties.

[18] Regarding subsection 61.(1)(d), the Officer specifically notes the testimony provided by the Landlord's witness who stated the Tenant has caused the fire alarm to go off several times causing her family to evacuate the Residential Property. She stated she can often hear swearing, thumping, guitar playing, and screaming coming from the Rental Unit at all hours. Individuals who are visiting or living with the Tenant will often disturb her family. The Officer also notes the photographs submitted by the Landlord which shows the garbage accumulated around the Rental Unit.

[19] Regarding subsection 61.(1)(f), the Officer specifically notes the photographs submitted by the Landlord which show the damages to the door and windows of the Rental Unit.

[20] Therefore, the Officer finds that the Landlord has properly served the Eviction Notice and has valid grounds to terminate the tenancy agreement pursuant to clause 61(1) of the Act.

Deeming Provisions

[21] 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 and the Tenant has not vacated the Rental Unit by the effective date of the Notice. Clauses 61(5) and (6) of the Act state:

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*

[22] The evidence establishes that a Landlord representative served the Notice on January 24, 2024. 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 has not vacated the Rental Unit by the effective date on the Notice.

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

[24] 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.*

[25] The Officer finds that the tenancy shall end, and the Tenant and all occupants shall vacate the Rental Unit on or before **March 22, 2024, at 5:00 p.m.**

Conclusion

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

[27] The tenancy shall end, and the Tenant and all occupants shall vacate the Rental Unit on or before **March 22, 2024, at 5:00 p.m.**

IT IS THEREFORE ORDERED THAT

- A. The tenancy shall end, and the Tenant and all occupants shall vacate the Rental Unit on or before **March 22, 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 15th day of March, 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.