

**Introduction**

- [1] On March 20, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). Attached to the Application was an *Eviction Notice* (Form 4(A)) dated March 12, 2024 for effect on April 30, 2024 (the "Notice").
- [2] The Notice was served to the Tenant for the following reason:
- There is an order requiring the rental unit to be vacated.*
- [3] On March 27, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on April 9, 2024.
- [4] On April 5, 2024 the Rental Office emailed an evidence package to the parties.
- [5] On April 8, 2024 the teleconference hearing was rescheduled to 11:00 a.m. on April 12, 2024.
- [6] On April 12, 2024 a teleconference hearing was held with the parties for determination of the Application.

**Preliminary Matter**

- [7] The Landlord wrote his personal name on the Notice and provided submissions at the hearing that he is the Tenant's landlord.
- [8] The Unit is owned by the Landlord's numbered company. The Officer notes that the company also meets the definition of "landlord" pursuant to subsection 1(h) of the *Residential Tenancy Act* (the "Act").

**Issue to be Decided**

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

**Summary of the Evidence**

- [9] The Unit is a one-bedroom, one-bathroom apartment located in an eight-unit building (the "Residential Property") that the Landlord's company purchased in May or June of 2016.
- [10] The former owner of the Residential Property and the Tenant entered into an oral, month-to-month tenancy agreement that commenced 16 or 17 years ago. The tenancy continued after the Landlord's company purchased the Residential Property. The monthly rent is \$540.00, including heat, due on the first day of the month. The Tenant paid a \$250.00 security deposit when he first moved into the Unit.

**Landlord's Evidence and Submissions**

- [11] The Landlord's evidence is summarized as follows.
- [12] On March 7 or 8, 2024 water flowed out from the sewer hole backup and from corners underneath the foundation of the Residential Property. Damage occurred to the four lower units and some common areas.
- [13] The Landlord consulted with his contractor and insurer regarding the appropriate steps to treat the water damage. The floors in the units must be ripped up and replaced. Drywall and trim must be removed.

- [14] The insurer estimated the damage cost to be between \$20,000.00 and \$30,000.00 and the Landlord's insurance only covers part of the cost. The insurer advised the Landlord that if the water damage is not fixed then the insurer will not provide coverage for future mold damage.
- [15] The Landlord needs all of the tenants in the four lower units of the Residential Property to vacate for renovations to be completed.
- [16] The Landlord does not have an order from a federal, provincial or municipal government authority requiring the Unit to be vacated.

### Tenant's Evidence and Submissions

- [17] The Tenant's evidence is summarized as follows.
- [18] There was an earlier flood at the time the former owner owned the Residential Property. There was already mold growing underneath a sink in the Unit.
- [19] The recent flood was cleaned up very quickly by the building superintendent.
- [20] The Tenant does not know why he would need to permanently leave the Unit. The Tenant submitted that he could move back in after the renovations are completed.

### Analysis

- [21] The Landlord seeks to terminate the tenancy based upon clause 61(1)(k) of the *Act*, which states:

*A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*

*(k) the rental unit is required to be vacated to comply with an order of a federal, Prince Edward Island or municipal government authority;*

- [22] The evidence establishes that the Landlord does not have an order from a federal, provincial or municipal government authority requiring the Unit to be vacated. Therefore, the Landlord cannot terminate the tenancy on this ground. The Officer finds that the Notice is invalid and the Application is allowed.
- [23] The evidence presented indicates that the Landlord wants to renovate the Unit due to water damage.
- [24] When the *Act* came into force on April 8, 2023 a new process was established for ending tenancies for renovations. A landlord must first file an application (*Landlord Application for Approval for Renovations/Repairs – Form 6*) with the Rental Office and obtain the Director's approval to serve a notice of termination (*Eviction Notice - Form 4(B)*) for repairs or renovations (see clauses 64(1)(c) and 64(2) of the *Act*).
- [25] If a landlord obtains the Director's approval, then the landlord may serve a tenant with a notice of termination (*Eviction Notice - Form 4(B)*). A tenant may decide to dispute the notice of termination for repairs or renovations by filing an application (*Tenant Application to Determine Dispute – Form 2(A)*) with the Rental Office within one month after the date the tenant receives the notice (subsection 64(6)).
- [26] Service of a notice of termination for repairs or renovations triggers a landlord's obligation to provide a tenant with a right of first refusal, allowing the tenant to move back into the unit after the work is complete (section 68). A tenant may also be entitled to compensation (section 70).

**Conclusion**

- [27] The Notice is invalid and the Application is allowed. The tenancy between the Landlord and the Tenant will continue in full force and effect.
  
- [28] The Officer notes that on Prince Edward Island rent runs with the rental unit and not the tenant (section 47). This means that when a tenant moves out of a rental unit a landlord cannot automatically increase the rent for the unit and must instead comply with the rent increase rules in Part 3 of the *Act* (sections 47 to 50). Completing repairs or renovations would not exempt a landlord from the rent increase restrictions.

**IT IS THEREFORE ORDERED THAT**

- 1. The tenancy between the Landlord and the Tenant will continue in full force and effect.

**DATED** at Charlottetown, Prince Edward Island, this 15th day of April, 2024.

(sgd.) Andrew Cudmore

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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.