

Introduction

- [1] On April 3, 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 28, 2024 for effect on April 30, 2024 (the "Notice"). The Application also requests compensation for an alleged breach of the *Residential Tenancy Act* (the "Act").
- [2] The Notice was posted to the front door of the Rental Unit on March 28, 2024 for the following reason:

You or someone you have allowed on the property have disturbed, endangered others or put the landlord's property at significant risk.
- [3] On April 3, 2024 the Tenant electronically served the Application to the Landlord's representative (the "Representative").
- [4] On April 5, 2024 the Rental Office provided the parties with the *Notice of Hearing* electronically.
- [5] On April 15, 2024 the *Evidence Package* was electronically made available to the parties by Titan File. The *Evidence Package* contains 179-pages of documents, eight videos submitted by the Tenant, nine videos submitted by the Landlord. After the hearing, 15-pages of additional evidence were submitted by the parties.
- [6] All documents (including the Application, the *Notice of Hearing*, and the *Evidence Package*) were properly served to the parties in accordance with clause 100(1) of the Act.
- [7] On April 18, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Tenant participated with one witness. The Representative participated, representing the Landlord with one witness.

Preliminary Matter – Evidence Package and Additional Evidence

- [8] The Tenant acknowledged at the beginning of the hearing that he received and reviewed the *Evidence Package*. The Tenant noted that he submitted over 300-pages of documents into evidence for the Application. However, at the request of the Rental Office, the Tenant removed numerous documents from his evidence, mainly duplicated photographs of the same item(s), which reduced the overall size of the *Evidence Package*.
- [9] At the beginning of the hearing, the Officer asked the Tenant and the Representative if there were any documents missing from the *Evidence Package*, which either party would like included in the evidentiary record. Both the Tenant and the Representative confirmed with the Officer that they were satisfied with the evidentiary record at the beginning of the hearing.
- [10] The Officer notes that mid-way through the teleconference hearing, the Tenant's witness had to leave due to another commitment. The Tenant's witness, despite being affirmed under oath, did not have the opportunity to provide oral testimony at the hearing. The Officer permitted the Tenant's witness to submit a written submission by Friday, April 19, 2024. The Tenant's witness left the hearing, and on Friday April 19, 2024 the Tenant's witness sent the Tenant her written submission. On Monday, April 22, 2024 the Tenant submitted the Tenant's witness submission, which was 13-pages of additional evidence.
- [11] On Tuesday, April 23, 2024, the Representative provided his response to the witness's submission. The response was 2-pages of additional evidence.

Issues to be Decided

- i. Does the Tenant have to vacate the Rental Unit due to the Notice?
- ii. Is the Tenant entitled to compensation due to the Landlord breaching the Act?

Summary of the Evidence

- [12] The Tenant has lived in the Rental Unit since 2007 or 2008, and was party to a tenancy agreement with the former landlord. The Rental Unit is situated in a 14-unit apartment building (the "Residential Property"). The Landlord purchased the Residential Property and the tenancy continued. On October 7, 2022 the parties formalized a written, month-to-month tenancy agreement. The terms of the agreement remained the same. Rent is \$621.00 due on the first day of the month. A security deposit of \$300.00 was paid and transferred to the Landlord.

Landlord's Evidence and Submissions

- [13] The Landlord submitted 136 documents into evidence including: a copy of the Notice, a copy of the tenancy agreement, proof of service, authorization that the Representative may represent the Landlord, a copy of a warning letters to the Tenant, two Police Services Reports, a witness statement, two written submissions as points of clarity by the Landlord, e-mails by the Tenant, text and e-mail complaints from other tenants, and nine videos. The Landlord also had one witness provide oral testimony at the hearing. The Representative submitted a response to the Tenant's witness disputing points and clarifying points made in the written submission.
- [14] The Representative stated that the Tenant continues to show disruptive behaviour, and has intimidated himself and his staff. The Tenant has received numerous oral and written warnings because of his behaviour and actions over the past months. The Representative stated that the police have been to the Residential Property on numerous occasions because of the Tenant.
- [15] The Representative stated that he has been orally assaulted by the Tenant, with the Tenant calling him offense names. The Representative stated that the Tenant has harassed, disturbed, and made false allegations against other tenants in the Residential Property.
- [16] The Representative stated that the Tenant alleges that the Rental Unit is being 'gassed', and that the tenants below the Rental Unit are conducting illegal activity. The Representative stated that he has taken the Tenant's allegations seriously, and inspected the Residential Property. The Representative stated that he has never smelled or experienced these 'gasses'. The Representative stated that the Charlottetown Police have completed their own investigation, and have attended the Residential Property numerous times. The Representative stated that there is no evidence to support the Tenant's allegations. The Representative stated that the Tenant refuses to accept the findings from the police and himself.
- [17] The Representative stated that he has received numerous complaints about the Tenant's behaviour, which has led to numerous warnings. The Representative stated that the Tenant and another tenant have loud and disruptive conversations in the Residential Property hallway, and that the Tenant has stomped loudly, rang another tenant's door bell, and has shown aggressive behaviour. The Representative stated that there have been times where he would have to leave the Residential Property just to deescalate the situation caused by the Tenant's aggressive behaviour.
- [18] The Representative stated that he has gone to the Rental Unit and attempted to provide insulation to assist in the Tenant's complaint about being gassed. The Representative stated that the Tenant told him not to return to the Rental Unit. The Representative stated that the Tenant runs the hot and cold water in the Rental Unit on a continuous basis, resulting in other tenants not being able to have hot showers and/or negatively impacting the water pressure.

- [19] The Representative denied the Tenant's testimony provided at the hearing. The Representative stated that the Tenant is unwilling to accept that nothing illegal is happening at the Residential Property. The Representative stated that he does not believe the Tenant's behaviour will improve.
- [20] The Representative stated that he does not know what more he can do for the Tenant. There is no evidence to prove the Tenant's allegations, and that he has inspected the Residential Property and has relied on the professional's findings. The Representative denied breaching his duties and/ or obligations under the Act.

Witness Testimony for the Landlord (LW)

- [21] LW stated that she moved into the Residential Property in April 2023. LW stated that the Residential Property is a hostile environment and that she feels unsafe because of the Tenant's unpredictable and aggressive behaviour.
- [22] LW stated that the Tenant's behaviour has escalated over the past year. LW stated that the police and the Fire Marshall have been to the Residential Property and her unit. LW stated the Tenant alleges the gas is coming from the unit which is adjacent to her unit. LW stated that she has never complained or experienced any gasses which the Tenant describes.
- [23] LW stated that she works from home and is repeatedly disturbed by the Tenant causing noise. LW stated that she has called 9-11 before and has loss income and sleep due to the Tenant's noise. LW stated that she has complained to the Representative on numerous occasions about the Tenant's noise and behaviour.

Tenant's Evidence and Submissions

- [24] The *Evidence Package* contains the following evidence from the Tenant: 43-pages of documents including photographs, air purifier results, a doctor's note, and eight videos. The Tenant had one witness submit a written submission after the hearing.
- [25] The Tenant did not dispute the loud stomping and ringing the doorbell of LW's unit. The Tenant stated that his aggressive behaviour is caused by the gas, which causes him to have physical symptoms and a range of emotions. The Tenant stated that he has lived in the Residential Property for a long time and issues only started when the Representative took over management and the tenants below the Rental Unit moved in. The Tenant stated that another tenant in the Residential Property also experiences the same symptoms.
- [26] The Tenant stated that the gas is progressively getting worse in the Rental Unit, and every time he brings up the complaints he is "gaslighted" and feels everyone is against him. The Tenant stated that the Representative and the police are negligent, lazy and incompetent. The Tenant stated that he has taken his own steps to protect himself against the gas. The Tenant stated that he has three air purification systems, he moved some items to another room in the Rental Unit, and he has used tinfoil to block the gas from coming through any pipes.
- [27] The Tenant stated that he has notified numerous agencies and authorities about the gas issues, and the illegal activity coming from the unit below him. The Tenant stated that the tenants below him should be evicted and he has seen unknown people coming and going with cans.
- [28] The Tenant stated he is not a threat and apologized to LW for his actions.
- [29] The Tenant stated that he went to his family physician regarding his symptoms. The Tenant stated that his family physician admitted him on March 6, 2024 and he was released March 20, 2024.

- [30] The Tenant stated that he is currently unemployed. The Tenant stated that he is seeking \$20,000.00 in compensation for loss of salary, and compensation for breach of quiet enjoyment, and to a safe Rental Unit.

Witness Testimony for the Tenant (TW)

- [31] TW submitted a written submission after the hearing. The written submission is summarized as follows. TW submits that she lived in the Residential Property for 10 years. TW submits that the Representative is not believing the Tenant or herself regarding the illegal activity happening in the Residential Property. TW submits that there are numerous issues with these other tenants and provided character evidence regarding these other tenants. TW supported the Tenant's testimony and provided her own account and experiences regarding the issues alleged at the Residential Property. TW submitted that the Representative is not doing anything and does not believe the Tenant or herself.

Analysis

The Eviction

- [32] The Application is made in accordance with clause 75 of the Act. The reason for the termination of the tenancy is pursuant to clause 61(1)(d) 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.*

- [33] The Landlord bears the onus of proving its claim on a balance of probabilities. The courts have interpreted this standard to mean that a decision-maker must be satisfied that there is sufficiently clear, convincing and cogent evidence to support the claim(s) and the value of the claims.

- [34] The Officer notes that the Representative submitted numerous documents into evidence, including three written warnings to the Tenant regarding his behaviour and the complaints made against him by another tenant in the Residential Property. A police report dated February 1, 2024 details police visits to the Residential Property and stated that "it was determined there were no such gasses/fumes in the apartment." Further, a letter dated April 2, 2024 from the Charlottetown Police reveals that the police have visited the Residential Property on nine occasions between August 28, 2023 and March 6, 2024.

- [35] The Representative provided direct testimony that he investigated the allegations made by the Tenant, and inspected the Residential Property with no evidence found to prove the Tenant's allegations. The Representative provided direct testimony that the Tenant has been aggressive and verbally assaulted him on numerous occasions. The Representative noted on page 67 of the *Evidence Package* a witness statement from a worker who observed aggressive behaviour by the Tenant.

- [36] Further, the Officer notes that LW provided direct testimony regarding her complaints and disruptive experiences with the Tenant, and living at the Residential Property.
- [37] The Tenant in his testimony did not deny the allegations of noise complaints and aggressive behaviour towards the Representative and LW. The Tenant stated that these issues were all caused by the gas in the Rental Unit. The Officer finds that the Tenant's claims of gases is not supported by the evidence presented. In particular, there is an absence of professional or expert evidence on this point.
- [38] The Officer finds that the Landlord has established valid grounds for terminating the tenancy, pursuant to clause 61(1)(d) of the Act. The Officer finds that the documentary evidence and the witness testimony from LW provides convincing evidence to establish the justification for terminating the tenancy agreement.

Breach of the Act and Compensation

- [39] The Tenant bears the onus of proving his claim on a balance of probabilities. The Officer notes that the Tenant provided numerous documents into evidence, mainly photographs of the Rental Unit, air purifier results, videos and e-mail exchanges to numerous parties.
- [40] The Officer finds that despite the volume of evidence submitted by the Tenant, the Tenant has not provided convincing evidence to conclude that the Landlord has breached its duty and/or responsibilities under the Act. Therefore, the Application is denied.

Conclusion

- [41] The Application is denied. The Notice is valid.
- [42] The tenancy agreement shall terminate and the Tenant shall vacate the Rental Unit by 5:00 p.m. on May 3, 2024.
- [43] **This Order will be served to the parties by e-mail.**

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on May 3, 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 26th day of April, 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 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.