

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On April 8, 2024 the Tenants filed a *Tenant Application to Determine Dispute (Form 2(A))* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed to dispute an *Eviction Notice*. Attached to the Application were two *Eviction Notices (Form 4(A)s)*.
- [3] The first *Eviction Notice* dated April 4, 2024 was replaced by the second *Eviction Notice* dated April 5, 2024 for effect May 4, 2024 (the “Notice”).
- [4] The Notice was electronically served to the Tenants on April 5, 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.*
- [5] The particulars of termination state:
- “Considerable damage to the property which was never reported and therefore has made the property damage worse and unsafe. Collapsed back deck, water damage in the basement from pipe leak and ground water leading to mould, and floor and wall damage, and not covering the pool over the winter.”*
- [6] On April 9, 2024 the Tenants electronically served the Application to the Landlords.
- [7] On April 16, 2024 the Rental Office mailed and e-mailed the *Notice of Hearing* to the parties.
- [8] On April 24, 2024 the *Evidence Package* was electronically made available to the parties via Titan File. The *Evidence Package* contains 120-pages of documents and 1 video submitted by the Tenants.
- [9] On April 30, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Officer heard oral submissions from the Tenants, the Landlords, and the Landlords’ witness (referred to as LW).

Issue to be Decided

- i. Do the Tenants have to vacate the Rental Unit due to the Notice?

Summary of the Evidence

- [10] The parties entered into a written, fixed-term tenancy agreement for the period of June 1, 2021 to May 31, 2022. The tenancy continued as a month-to-month agreement. Rent is \$2,393.00 due on the first day of the month. A security deposit of \$2,300.00 was paid on June 1, 2021.
- [11] The Rental Unit is situated in a single family home (the “Residential Property”).

Landlords’ Evidence and Submissions

- [12] The Landlord submitted 54-pages of documents into evidence including: a written submission, text messages between the parties, e-mails between the parties, photographs, an e-mail with Live for Today Pools and Spas, and a copy of the tenancy agreement.
- [13] The Landlords’ witness provided witness testimony, summarized as follows.

- [14] LW stated that she was present for the April 4, 2024 inspection at the Residential Property. LW stated that she witnessed water damage, the collapsed deck and mold in the Residential Property. LW stated that she witnessed the Tenants informing the Landlords of the leaking issues in the Rental Unit.
- [15] The Landlords stated that the Tenants have put the Residential Property at significant risk. The Landlords outlined four reasons that justify the termination of the tenancy agreement.

The First Reason – Not advising of deck collapsing

- [16] The Landlords stated that the Tenants knew that the Residential Property's back deck collapsed, and did not inform the Landlords until April 2, 2024. The Landlords stated that the Tenants only informed them of the deck's collapse because they knew an inspection of the Residential Property was happening on April 4, 2024.
- [17] The Landlords stated that this is an emergency repair, as defined in the Act. The Tenants have a responsibility to tell the Landlords as soon as practicable. The Landlords stated that the Tenants did not, and this created a liability and safety concern.

The Second Reason – Not advising of water leak

- [18] The Landlords stated that the Tenants did not inform the Landlords of the on-going leak in the ceiling. The Landlords stated that during the inspection, the Tenants stated that every time it rains water gets into the basement. The Landlords stated that due to this, water damage has spread throughout the hardwood floor and drywall creating an environment for mold to grow.
- [19] The Landlords stated that after the major leak in September 2023, the Tenants never informed them of any issues of leak, mold or water damage until it was discovered in April 2024. The Landlords submitted this is grounds for terminating the tenancy agreement.

The Third Reason – Breaching tenancy agreement

- [20] The Landlords stated that the Tenants broke a term of the tenancy agreement. The Landlords stated that the tenancy agreement states: "The Lessees will be responsible for paying for the opening and closing of the swimming pool from a company approved by the Lessors." The Landlords stated that the Tenants did not have the pool professionally closed in the fall of 2023, rather closing it themselves. This put the pool at significant risk of damage, and potentially costing thousands of dollars in repairs. The Landlords stated that an assessment of the pool is scheduled for May 9, 2024.

The Fourth Reason – Cleanliness

- [21] The Landlords stated that the Tenants have failed to keep the Residential Property clean. The Landlords stated that the garage was full of blue bags and garbage. The Landlords stated that the yard also had debris and tools scattered around the Residential Property. The Landlords stated that the Tenants were warned through text message and e-mail regarding the garbage and debris.

Tenants' Evidence and Submissions

- [22] The Tenants submitted 60-pages of documents into evidence including: a written submission, e-mails, photographs, text messages, a copy of the Notice, a copy of the Application, an e-mail submission from Live for Today Pools and Spas, and reference letters from neighbours. The Tenants submitted one video into evidence.
- [23] The Tenants' video is 22 minutes and 50 seconds long, and is a walk-through of the Residential Property with the Landlords and a contractor.

- [24] The Tenants disputed the Landlords' submissions and reasons for terminating the tenancy agreement. The Tenants stated that throughout the tenancy they were attentive and contacted the Landlords regularly if repairs were needed in the Rental Unit. The Tenants' response to the four reasons for termination outlined in the Landlords' submissions are summarized as follows.

The First Reason – Not advising of deck collapsing

- [25] The Tenants stated that the deck collapsed because of the foundation rotting. The Tenants stated that they did not cause the collapse and became aware of the collapse sometime during the winter (Late-February or March 2024). The Tenants stated that there were no malicious intentions with not informing the Landlords right away. The Tenants stated that they figured the deck could not be fixed until the Spring, when the snow melted, and did notify the Landlords within the month.

The Second Reason – Not advising of water leak

- [26] The Tenants stated that after the last major leak in September 2023, the damage to the floor and the drywall was not replaced. The Tenants stated that an assessment could have been completed after the plumbing repairs, but it was not completed. The Tenants stated that they did not notice any further leaks or mold after September 2023. The Tenants stated that they wiped down the baseboard and walls, removing any dirt or surface mold. The Tenants stated that the Landlords have improperly interpreted his comments about the leak and the ceiling. The Tenant stated that he is a contractor by trade, and provided his opinion regarding the possibility of another leak existing, causing water damage. The Tenants stated that they did not witness any physical leaks in the Rental Unit, and would have informed the Landlords if they had.

The Third Reason – Breaching tenancy agreement

- [27] The Tenants admitted to not having professionals close the pool in the fall of 2023. The Tenants stated that since they moved into the Rental Unit, they have always hired a professional to open, close and clean the pool. The Tenants stated that the fall of 2023 was the first and only time they did not. The Tenants stated that the pool has never been covered during their tenancy, and provided an e-mail comment from an employee from Live for Today Pools and Spas. The Tenants stated that no damage was caused to the pool, and the photographs are normal dirt accumulated after the winter. The Tenants stated that the pool needs to be cleaned, and chemically balanced. The Tenants stated that is the normal process with the pool and that the Landlords' photographs of the pool are misleading.

The Fourth Reason – Cleanliness

- [28] The Tenants stated that they missed a recycling day, which caused an accumulation of blue bags in the garage. The Tenants stated that the blue bags, and additional garbage has been removed. The Tenants stated that the debris and tools around the Residential Property have been cleaned up. The Tenants stated that because of the contractor work, a ladder may be around the Residential Property, but it is removed regularly for work.
- [29] The Tenants concluded their submissions by questioning the Notice. The Tenants stated that the Landlords have informed them of their intention to sell the Residential Property and complete some renovations. The Tenants stated that they should have been given an *Eviction Notice – Form (4(B))*. The Tenants stated that they do not think the Landlords have provided justification for terminating the tenancy agreement. The Tenants stated that they have not caused or contributed to any of the issues in the Rental Unit. The Tenants submit that the Rental Unit is an aging home, and numerous and on-going repairs have been required throughout the tenancy.

Analysis

[30] 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.

[31] The Landlords bear the onus of proving their claims on a balance of probabilities. This means that a decision-maker must be satisfied that there is sufficiently clear, convincing and cogent evidence to support the claims.

[32] The evidentiary record includes one video, numerous documents submitted by the parties, witness testimony and lengthy testimony and submissions provided by the parties. The Landlords outlined four main reasons for terminating the tenancy agreement. The Tenants disputed the four reasons.

[33] The Officer has reviewed the full evidentiary record, and makes the following findings on each reason:

The First Reason – Not advising of deck collapsing

[34] The Officer finds that the testimony of the parties and the photos provided into evidence establish that the Residential Property's deck collapsed. The Landlords are not alleging the Tenants caused this collapse, rather the Landlords allege that the Tenants knew and did not inform the Landlords in a reasonable time, putting the Residential Property at significant risk.

[35] The Tenants' testimony provided context, which revealed there was no malicious intention, or an attempt to hide the collapse. The Tenants were unsure when they became aware of the collapse, and estimated that they notified the Landlord within a month of knowing. The Tenants provided that they did not see it as an "emergency" and figured no repairs could be done until the Spring.

[36] The evidence presented indicates that the Tenants informed the Landlords approximately one month after they became aware of the problem. The Officer finds that the Landlords have not established that this timeline amounts to a level which would either jeopardize the safety, lawful right or has put the property at significant risk. The Officer is not convinced by the evidence and the submissions provided by the Landlords that the **first reason** justifies a termination of the tenancy agreement.

The Second Reason – Not advising of water leak

[37] The Officer finds that the testimony of the parties, along with the documentary evidence establish that there was an issue with leaks throughout the tenancy. The Tenants' evidence shows that the Tenants have regularly contacted the Landlords to inform them of the leaks. The Officer notes that the Landlords evidence shows water damage and mold in the Rental Unit. However, the Tenants have testified that the mold has been cleaned and removed, and that the water damage was preexisting from a September 2023 leak.

- [38] The Officer further notes that the Landlords' submissions rely upon the Tenant's comment made during the inspection. The Landlords' infer from the Tenant's comments that he knew about water leaks every time it rained, which caused or worsened the water damage to the Rental Unit. The Tenant disputed the Landlords' inference, providing that he was merely giving his professional opinion, and never directly witnessed any leaks in the Rental Unit prior to September 2023.
- [39] The Officer finds that the Landlords' evidence does not establish their claim that the Tenants' knew about a leak prior to September 2023. The Officer finds that the Landlords' inference, even though it is corroborated by LW, does not provide convincing evidence to conclude the Tenants' knowledge of any further leaks prior to September 2023. The evidence establishes that after September 2023, water damage remained in the Rental Unit, the evidence, however, does not support the conclusion that the Tenants' knew about a leak, and the evidence does not support the conclusion that the water damage worsened from September 2023 to April 2024. The **second reason** is not established.

The Third Reason – Breaching tenancy agreement

- [40] The Officer finds that the testimony from the parties and the copy of the tenancy agreement establish that the Tenants were responsible to hire a professional to open and close the pool. The testimony before the Officer establishes that the Tenants did not follow this procedure in the fall of 2023.
- [41] The Officer notes that the evidence submitted by the Landlords does not establish that the Tenants' breach has caused significant damage to the pool. The Landlords' reason for the eviction is pursuant to clause 61(1)(d) of the Act. In the Notice, the Landlords did not select breach of a material term of the tenancy agreement (clause 61(1)(h)) as a basis for termination. However, the Officer notes that even if the Landlords did select clause 61(1)(h), it requires the Landlords to provide written notice/warning to the Tenants. The evidence suggests the Landlords did not provide a written warning regarding the pool. The Officer finds that the **third reason** does not justify a termination of the tenancy agreement.

The Fourth Reason – Cleanliness

- [42] The Officer finds that the Landlords provided photographs of the Residential Property and text messages warning the Tenants about their tools and debris. The Tenants testified that the debris, tools, blue bags and garbage have been cleaned up. The Officer finds that it is the Tenants' responsibility to maintain the Rental Unit to an ordinarily clean state. The Officer has reviewed the evidentiary record, and finds that the Tenants have taken reasonable steps to clean up at the Landlords' request. The Officer finds that the **fourth reason** does not justify terminating the tenancy agreement.

Conclusion

- [43] The Application is allowed and the Notice is invalid.
- [44] The tenancy agreement shall continue in full force and effect.
- [45] **This Order will be served to the parties by e-mail.**

IT IS THEREFORE ORDERED THAT

A. The tenancy agreement shall continue in full force and effect.

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