

Introduction

- [1] On April 9, 2024, the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office").
- [2] The Application was filed pursuant to the *Residential Tenancy Act* (the "Act") to dispute a *Notice of Termination by Lessor of Rental Agreement* (Form 4) dated April 2, 2024, effective May 2, 2024, (the "Notice"). The Notice was given to the Tenant for the following reason:

You have failed to fulfill your responsibility for ordinary cleanliness of the interior of the residential premises or for damage caused by you or persons you permitted on the premises.

The particulars of termination stated: "*hording apartment is a mess.*"

- [3] The Application is also seeking a determination that the Landlord entered the Rental Unit unlawfully and failed to repair or maintain the Rental Unit.
- [4] All relevant documents (including the Application, Notice of Hearing, and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [5] On April 30, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord, a Landlord witness, and the Tenant participated in the hearing.

Issues to be Decided

- i. Does the Tenant have to vacate the Rental Unit due to the Notice?
- ii. Did the Landlord breach the *Act*?

Summary of the Evidence

- [6] On March 1, 2023, the Tenant and the Landlord entered into a written fixed-term tenancy agreement for the Rental Unit which is situated in a multi-unit building (the "Residential Property"). Rent is \$995.00 due on the 1st day of the month. A security deposit of \$995.00 was paid.

Landlord's Evidence and Submissions

- [7] The Landlord stated on March 24, 2024, he was required to enter the Rental Unit due to an emergency with water leaking into the unit below. The Landlord stated this was the third time he was required to fix the toilet in the Rental Unit because the Tenant puts paper towel into the toilet which causes it to overflow. He stated he already repaired the unit below the Rental Unit and will be required to repair it again because of the water damage.
- [8] The Landlord submitted a written statement from the tenant who lives below the Rental Unit. He stated she told him if the Tenant does not leave then she will move out. In her statement she indicated that last year the Tenant had a leak in his bathroom and the leak damaged her unit. Recently, another leak from the Rental Unit caused damage to her unit again. Photographs of the water damage on the ceiling in this tenant's unit were submitted into evidence.

- [9] The Landlord stated when he entered the Rental Unit for the leak, he observed pizza boxes, garbage, and cockroaches everywhere. This was the second time in a year that the Landlord found the Rental Unit in an unclean condition. In May or June of 2023, other tenants of the building had moved out and left items by the garbage bins. The Tenant retrieved some of those items and took them into the Rental Unit which caused it to be cluttered. At that time, the Landlord told the Tenant to clean the Rental Unit and it took the Tenant over a month to do so. After the Tenant cleaned the Landlord was required to take two truck-loads of garbage to waste watch.
- [10] The statement from the tenant below the Rental Unit indicated she has observed the Tenant "dumpster diving" and the Tenant can often be seen taking food and other items from the building's garbage into the Rental Unit. She stated this has caused more animals to be around the Residential Property and she can smell a "rancid" smell in her unit coming from the Rental Unit. Photographs of the Tenant by the building's garbage bins were submitted into evidence.
- [11] The Landlord submitted a written statement from an owner of a property management company. The statement indicated in March 2024 his company was hired by the Landlord to manage the Residential Property while the Landlord was away. During this time, he was required to let a pest control company into the Rental Unit to get it ready for a cockroach treatment.
- [12] The owner's statement indicated he observed "about 50 pizza boxes and 10 to 12 bags of garbage all over the place" and other boxes and garbage along the walls in the Rental Unit. The patio door was blocked and there was "a mess everywhere." He stated he could not see the floor and observed food, pop, and liquids all over the floor. The Tenant was advised he had to clean the Rental Unit before the pest control company could spray. The Landlord stated the property management company assisted the Tenant and removed approximately 20 bags of garbage from the Rental Unit during the Tenant's clean up.
- [13] The Landlord submitted an invoice from the pest control company dated March 27, 2024. The invoice stated the technician was able to get to 80% of the baseboards but the Rental Unit was "still very cluttered." It stated the technician vacuumed up about 100 live cockroaches and after the treatment there were many dead cockroaches on the floor.
- [14] The Landlord stated he would allow the Tenant remain in the Rental Unit until June 30, 2024, to allow the Tenant more time to secure a new rental unit.

Tenant's Evidence and Submissions

- [15] The Tenant did not submit any evidence prior to the hearing. The Tenant stated the Landlord has told him the water around the toilet was condensation and the Landlord did not fix any leaks which may have existed. The Tenant denied putting paper towel into the toilet. He stated the Rental Unit was unclean when he moved in and he had to clean it himself.
- [16] He stated on March 24, 2024, he did not receive a 24-hour notice of inspection. On April 2, 2024, the Landlord opened the door of the Rental Unit when the Tenant was not home and put the Notice in the Tenant's door.
- [17] The Tenant stated he is on a fixed income and is a "dumpster diver." In July of 2023, other tenants in the building had moved out and left items by the dumpsters. He stated many of the items were clean and in bags and he collected some of the items and recyclables and took them into the Rental Unit. He stated the Landlord spoke to him about cleaning the Rental Unit at that time and he had a yard sale and was able to get rid of many of the items.

- [18] The Tenant stated in January 2024 a family member had passed away and he had a hard time dealing with this situation. The Tenant admitted to neglecting his cleaning duties in the Rental Unit until he was advised to clean for the pest control treatments. The Tenant two bags of garbage, three bags of pizza boxes, and a mattress were removed from the Rental Unit and not 20 bags as stated by the Landlord. On May 1, 2024, the Tenant notified the Rental Office that he will be vacating the Rental Unit and agreed to the Landlord's offer to vacate by June 30, 2024.

Analysis

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

- [19] In applications where there is a dispute over an eviction notice, it is the Landlord's burden to prove, on a balance of probabilities, their reasons for terminating the tenancy agreement. This means the Landlord must provide the decision-maker with sufficiently clear and convincing evidence to prove their claims.
- [20] The Notice that the Landlord served the Tenant was an eviction notice that was used pursuant to the *Rental of Residential Property Act* (the "Former Act") which was repealed in April 2023. The Landlord's reason for serving the notice was failing "to fulfill your responsibility for ordinary cleanliness of the interior of the residential premises." The Officer notes that this cause for eviction is similar to the cause found in clause 61.(1)(h) 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:

(h) the tenant

(i) has failed to comply with a material term of the tenancy agreement, and

(ii) has not corrected the situation within a reasonable time after the landlord has given written notice to do so.

- [21] Based on the evidence provided, the Officer notes that the material term of the tenancy agreement the Landlord is alleging the Tenant has failed to comply with is clause 28.(3)(a) of the *Act* which states:

28. Tenant responsible for ordinary cleanliness

(3) A tenant is responsible for

(a) ordinary cleanliness of the rental unit and all areas of the residential property used exclusively by the tenant, except to the extent that the tenancy agreement expressly requires the landlord to clean it.

- [22] The Officer notes since the Tenant moved into the Rental Unit in March 2023, the Landlord has had to deal with three separate occurrences of leaks coming from the Rental Unit due to the Tenant clogging the toilet. The Landlord has been required to repair the unit below the Rental Unit and will have to repair it again. The tenant living below the Rental Unit has told the Landlord she may move out because of the repeated water damage.
- [23] The Landlord also has had to deal with repeated occurrences of the Tenant hoarding food, garbage, and other items in the Rental Unit, which has caused an infestation of cockroaches. The Tenant's hoarding has caused the Landlord to commit time and resources to this problem and he has been required to assist the Tenant in cleaning the Rental Unit, taking the Tenant's garbage to waste watch, and hiring a pest control company to spray for cockroaches.

- [24] To determine if there has been a breach of clause 61.(1)(h) of the *Act*, the Landlord must establish not just a breach of a material term of the tenancy agreement, but also that the Tenant has not corrected the situation within a reasonable time after receiving notice to do so. The Officer finds the Tenant was notified during the first hoarding incident in 2023 that this was unacceptable behaviour. The Tenant has also been told not to clog the toilet as it is causing leaks into the unit below.
- [25] However, the Tenant has not corrected these behaviors and has continued to hoard and clog the toilet in the Rental Unit. Although the Tenant stated his continued hoarding was the result of a death in his family, the Officer notes that the Tenant is still required to maintain the ordinary cleanliness of the Rental Unit.
- [26] The Officer therefore finds that the Landlord has established valid grounds for terminating the tenancy agreement, pursuant to clause 61.(1)(h) of the *Act*. Despite the Officer finding there are valid grounds for terminating the tenancy, the parties have agreed to a termination date and the Landlord has extended the Tenant's vacate date to June 30, 2024, at 5:00 pm.

Issue ii: Did the Landlord breach the *Act*?

- [27] The Tenant stated on March 24, 2024, he did not receive a 24-hour notice of inspection the Landlord would be entering the Rental Unit. However, the Officer finds that notice was not required pursuant to clause 23.(g) of the *Act*, as the Landlord determined the leak was an "*emergency*" and entry was necessary to "*limit damage to property*."
- [28] The Tenant stated on April 2, 2024, the Landlord opened the door of the Rental Unit and put the Notice in the door. However, the Officer does not find the Tenant has provided sufficient evidence to establish the Landlord opened the door to the Rental Unit at that time when serving the Notice.
- [29] The Tenant stated the Landlord has failed to repair or maintain the Rental Unit. However, the Officer does not find the Tenant has provided sufficient evidence to establish that the Landlord has breached his duty and/or responsibilities for repairs and maintenance under the *Act*.

Conclusion

- [30] The Notice is valid and the Application is denied.
- [31] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on June 30, 2024. The Tenant shall vacate the Rental Unit by this time and date.
- [32] This Order will be sent to the parties by email.

IT IS THEREFORE ORDERED THAT

- A. The Notice is valid and the Application is denied.
- B. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on June 30, 2024. The Tenant shall vacate the Rental Unit by this time and date.
- C. 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 7th day of May, 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.