

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On April 24, 2024 the Tenant 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 (Form 4(A))* dated April 22, 2024 for effect May 23, 2024 (the “Notice”).
- [3] The Notice was posted to the Rental Unit’s door on April 22, 2024 for the following reasons:
- You have permitted an unreasonable number of occupants in the rental unit;*
- You or someone you have allowed on the property have disturbed, endangered others or put the landlord’s property at significant risk; and*
- You have failed to comply with a material term of the tenancy agreement despite written warning.*
- [4] The particulars of termination stated:
- “We have learned over the weekend that you have more people living in the unit than you were approved to have. Attached are several warning letters. We feel you have been warned a sufficient number of times. Also, over the weekend your girlfriend defecated on the floor of our basement laundry room. This is not only completely unacceptable but also a health risk to all of our other tenants in the building.”*
- [5] On April 24, 2024 the Tenant electronically served the Application to the Landlord’s representative (the “Representative”).
- [6] On April 26, 2024 the Rental Office mailed and e-mailed the *Notice of Hearing* to the parties.
- [7] On May 2, 2024 the *Evidence Package* (“EP”) was e-mailed to the parties. EP contains 91-pages of documents submitted by the parties, and copies of the *Notice of Hearing*, and the Application.
- [8] On May 7, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant and the Representative participated at the hearing. The Officer heard oral submissions from the Tenant, the Tenant’s representative, a witness for the Tenant, the Representative, and two witnesses for the Landlord.

Issue to be Decided

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

Summary of the Evidence

- [9] The Rental Unit is an apartment unit situated in a 40-unit apartment building (the “Residential Property”).
- [10] On March 8, 2021 the parties entered into a written, fixed-term tenancy agreement for the period of April 1, 2021 to March 31, 2022. The tenancy continued as a month-to-month agreement. Rent is \$895.00 due on the first day of the month. A security deposit of \$430.00 was paid.

Landlord's Evidence and Submissions

- [11] The Representative submitted 30-pages of documents into evidence including: applications for the Rental Unit with the terms of the tenancy, letters to the Tenant dated April 5, 2023, December 11, 2023, and January 15, 2024, an e-mail submission by the Landlord's first witness (LW1), photographs, text messages, and a copy of the tenancy agreement.

The Representative

- [12] The Representative stated that she has received different complaints about the Tenant over the tenancy. The Representative stated that the tenancy agreement only allows for two people to live in the Rental Unit. However, the Tenant has allowed more than two people to live in the Rental Unit. The Representative stated that the letters submitted into evidence show the Tenant has been warned about this issue. The Representative stated that despite the Tenant informing her when one occupant moved out and another moved in, the Tenant did not follow the proper process.
- [13] The Representative stated that in August 2023, the Tenant urinated on a vehicle parked in the Residential Property's parking lot. The Representative stated that she was informed by LW1 shortly after the incident but admits to not taking any further action.
- [14] The Representative stated that on April 20, 2024 the Tenant's girlfriend defecated in the Residential Property's laundry room. This was unacceptable behaviour, and created an unsanitary and unhealthy environment for other tenants and staff.
- [15] The Representative stated that some of the other issues related to the Tenant was not removing his vehicle from the parking lot in a timely manner and the Tenant and his guests using the Rental Unit's window as an entrance, which disturbed neighbouring tenants.

LW1

- [16] LW1 lives in the Residential Property and does work for the Landlord. LW1 submitted into evidence a written submission.
- [17] LW1 stated that only the Tenant and TW1 are permitted to live in the Rental Unit. However, TW1's girlfriend lives in the Rental Unit, and a number of other people have been seen going into the Rental Unit with bags. LW1 stated that she sees TW1 and his girlfriend most mornings at the bus stop across from the Residential Property. LW1 stated that the Tenant often would move his new roommate (occupant) into the Rental Unit first, before asking the Representative. LW1 stated that this is not the proper process, and suggested the text messages in evidence demonstrate the Tenant's pattern.
- [18] LW1 stated that during the Old Home Week in August 2023, she and LW2 were working security for the Residential Property's parking lot. LW1 stated that she witnessed the Tenant and his guest urinating on a luxury vehicle in the Residential Property's parking lot. LW1 admitted to not seeing the urination happening, however, stated that the Tenant's body language, and the puddle beside the vehicle, was enough for her to know that the Tenant urinated. LW1 stated that she informed the Representative shortly after the incident. LW1 stated that there are children living in the Residential Property and that it is not appropriate for the Tenant and his guests to do such things in public areas.
- [19] LW1 stated that it took the Tenant three weeks to remove his broken vehicle from the Residential Property's parking lot. LW1 stated that all vehicles must be in working condition as the snow removal trucks require all vehicles be removed from the parking lot. LW1 stated that the Tenant ignores requests and text messages. LW1 stated that the Tenant allows this negative conduct and environment to happen.

LW2

- [20] LW2 lives in the Residential Property and does work for the Landlord. LW2 submitted a written submission and photographs taken by him into evidence.
- [21] LW2 stated that on April 20, 2024 around 8:00 p.m. a woman who was intoxicated showed up to the Residential Property. LW2 stated that she was standing on the steps of the front door of the Residential Property smoking. LW2 stated that the stranger had access to the front door of the Residential Property as there was a bag of clothing holding the door open. LW2 stated that the woman said she was the Tenant's girlfriend, and knew specific details about the Tenant. LW2 stated that the woman went to the Rental Unit's door and knocked. After there was no answer, LW2 asked the woman to leave the Residential Property as she was causing a disturbance.
- [22] LW2 stated that he saw the woman walking away and he proceeded to take the garbage out. LW2 stated that when he returned from taking the garbage out he smelt something bad and when he went to the laundry room he found human feces and used tissues. LW2 stated that he cleaned it, but never experienced anything like that before while working at the Residential Property.
- [23] LW2 stated that after he finished cleaning the laundry room, the Tenant arrived to the Residential Property. LW2 stated that he informed the Tenant of the incident, which the Tenant responded "okay" and went into the Rental Unit.

Tenant's Evidence and Submissions

- [24] The Tenant submitted 49-pages of documents into evidence including: letters from the Representative, numerous bus tickets, photographs of the Rental Unit, a list of former and current roommates, text messages, a work schedule for the week of April 14, 2024, and a sublease agreement.
- [25] The Tenant stated that only TW1 and himself live in the Rental Unit full time. The Tenant stated that he never received a complaint from the Representative about the process of finding a new roommate. The Tenant stated that he would get the ID from the new roommate and provide it to the Representative. The Tenant stated that he never interpreted the letters from the Representatives to be warnings. The Tenant stated that they were simply confirmations and reminders about how many occupants were permitted in the Rental Unit.
- [26] The Tenant denied the Representative's, LW1 and LW2's allegations that his girlfriend and/or TW1's girlfriend lives in the Rental Unit. The Tenant stated that his girlfriend lives in Summerside and she would take the bus to the Residential Property and stay for a night or for a weekend. The Tenant stated that TW1's girlfriend too had her own residence and would only stay over once or twice a week. The Tenant submitted numerous bus tickets showing trips to and from Summerside.
- [27] The Tenant stated that another person stayed at the Rental Unit for one night before leaving the country. This was just a temporary thing and a favour for another person.
- [28] The Tenant stated that he did not recall the incident in August 2023. However, the Tenant admitted that he was drinking that day. The Tenant stated that he was never accused of similar behaviour. The incident was a one off situation.
- [29] The Tenant denied the allegations that the woman who defecated in the laundry room was his girlfriend. The Tenant stated that he does not know who this woman is, and that his girlfriend was in Summerside the night of April 20, 2024. The Tenant stated that his girlfriend came to the Residential Property the following day from Summerside. The Tenant stated that he did not permit, and/or request anyone to come to the Residential Property the night of April 20, 2024. The Tenant stated that during the time of the incident he was working. The Tenant submitted into evidence his work schedule which shows on April 20, 2024 the Tenant was working from 1:15 p.m. to 9:00 p.m.

- [30] The Tenant stated that his vehicle needed some tires, to be inspected and registered. The Tenant stated that he thought he complied with the timeline requested from the Representative to remove the vehicle from the parking lot. The Tenant stated that from time to time he or TW1 would forget their keys and would use the window to gain access to the Rental Unit. The Tenant denied the allegations that anyone else would regularly use the window as an access point for the Rental Unit.

TW1

- [31] TW1 is an occupant in the Rental Unit. TW1 stated that he moved into the Rental Unit in December 2023. TW1 stated that his girlfriend does not live in the Rental Unit. TW1 stated that his girlfriend lived in residence at UPEI. TW1 stated that on April 21, 2024 she signed a sublease agreement for another place, approximately 7 minutes away from the Residential Property. TW1 stated that his girlfriend might stay over once or twice a week. TW1 stated that the reason LW1 sees him and his girlfriend most mornings at the bus stop is because his girlfriend walks from her own place to the bus stop across from the Residential Property.

Analysis

The Eviction

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

- (c) *there is an unreasonable number of occupants in the tenant's rental unit;*
- (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.**
- (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.**

- [33] The Landlord bears the onus of proving its claim 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.

Number of occupants & Breach of a material term

- [34] The Officer finds that the parties provided undisputed evidence and testimony that the tenancy agreement only permits two occupants for the Rental Unit. The Officer notes that since December 2023, the two permitted occupants are the Tenant and TW1.

- [35] However, the Representative claims that Tenant has permitted more occupants into the Rental Unit, specifically, TW1's girlfriend. The Representative submitted numerous letters into evidence, describing the letters as warnings to the Tenant about the number of occupants allowed.

- [36] The Officer heard direct testimony from the Representative, LW1, TW1 and the Tenant regarding the number of occupants in the Rental Unit. Specifically, the Officer notes that LW1 provided her witness testimony describing her eye-witness account of seeing TW1 and his girlfriend on many mornings at the bus stop across from the Residential Property. Further, LW1 stated that she would have to chase the Tenant on numerous occasions to confirm who the new roommate may be, or what changes have happened regarding the occupancy at the Rental Unit. LW1 described the Tenant as not following proper processes.
- [37] The Tenant denied the claims made by the Landlord against him. The Tenant stated that he did not interpret the letters as ever being warnings, but rather informative reminders. The Tenant submitted documentary evidence to assist in his testimony, and TW1 provided witness testimony to assist in clarifying the Tenant's defense. TW1 provided direct testimony and documentary evidence to refute the Landlord's claims and LW1's witness testimony.
- [38] The Officer finds that the Landlord's documentary evidence and witness testimony does not sufficiently establish its claim that the Tenant permitted an unreasonable number of occupants into the Rental Unit and, therefore, breached a material term of the tenancy agreement.
- [39] The Officer finds that the letters submitted into evidence cannot reasonably be construed as 'warnings'. The Officer would expect a warning letter to name a specific issue, and/or behaviour that is being complained about with a time/date, and an unequivocal demand to stop and/or correct the named issue and/or behaviour. The letters submitted into evidence do not have such detail, rather the letters are merely confirmation and a reminder of a term in the tenancy agreement. Therefore, this reason for the termination of the tenancy agreement is denied.

Disturbing others & Jeopardizing the health & safety of others

- [40] The Officer notes that the Landlord seeks to terminate the tenancy agreement due to two separate incidents, along with the accumulation of other issues that persist throughout the tenancy. The Officer breaks the analysis and findings into three parts, addressing each issue as follows:
- i. The August 2023 incident;
 - ii. The April 2024 incident; and
 - iii. The "other" issues.

The August 2023 incident

- [41] The Officer heard witness testimony from LW1 and LW2 regarding the alleged urination incident which happened during Old Home Week in August 2023. LW1 and LW2 witnessed their description of the Tenant urinating on a vehicle in the Residential Property's parking lot. Photographs of a vehicle tire, and what is described as a wet stain on the cement were submitted into evidence. The Tenant did not recall the events in question as the Tenant admitted to be drinking, and that it was almost a year ago. The Tenant's representation argued that the stain could have been from water, or oil leaking from the vehicle, and that LW1 and LW2 did not directly witness the Tenant urinating.
- [42] The Officer finds based on the testimony provided, and the photographic evidence submitted it is more likely than not the Tenant urinated, at the very least, behind a vehicle in the Residential Property. However, the Officer must determine if this incident, and/or this behaviour rises to a level which would justify the termination of the tenancy agreement. For this, the Officer finds it does not.
- [43] The Officer finds that the Tenant made a poor decision that day. However, the Representative admitted to not taking any further action, as a result of the incident. The Officer further notes that the Representative should have taken action much sooner if she felt it necessary to terminate the tenancy for the August 2023 incident, which happened 8 months ago. Therefore, the Officer finds this reason for termination of the tenancy agreement is denied.

The April 2024 incident

- [44] The Officer heard witness testimony from LW1 and LW2 regarding an incident which happened on the evening of April 20, 2024. LW2 provided his direct testimony regarding an interaction between an unknown woman who was intoxicated, who claimed to be the Tenant's girlfriend, and defecated in the laundry room of the Residential Property. Further, photographs were submitted into evidence.
- [45] The Tenant denied knowing who this intoxicated woman was, and argued he was at work during the incident and never permitted or asked anyone to go to the Residential Property that evening. The Tenant submitted his work schedule into evidence.
- [46] The Officer finds that the witness testimony from LW1 and LW2 and the photographs submitted into evidence establish that an intoxicated woman who may have known the Tenant did defecate in the laundry room of the Residential Property. However, the Landlord has not provided evidence to establish that the Tenant knew, and/or permitted this intoxicated woman onto the Residential Property. The Tenant has provided evidence to establish he was working during the time of the incident and was not at the Rental Unit. Further, the Officer finds that there is no direct evidence to establish that this intoxicated woman was indeed the Tenant's girlfriend. The Tenant provided conflicting testimony and denied this fact.
- [47] The Officer finds that the Landlord has not established on the evidence that the Tenant permitted someone into the Residential Property, which caused a disturbance or safety issue. Therefore, this reason for termination of the tenancy agreement is denied.

The "other" issues

- [48] The Officer heard testimony from the Representative, LW1 and LW2 that there have been on-going issues with the Tenant, and that the Tenant has allowed for this negative environment to exist in the Residential Property. The Tenant was alleged to not comply with instructions, such as moving his vehicle for snow removal from the parking lot. The Tenant and his guests have entered and existed the Rental Unit through a window. The Tenant allows strangers into the Residential Property, and LW1 and LW2 testified that they often see new people on the Residential Property.
- [49] The Tenant disputed and provided clarity into the allegations made against him. The Officer finds that the Landlord has not provided sufficient evidence to establish justification for terminating the tenancy agreement because of these other issues. The Officer finds that many of the named issues were isolated incidents. The Officer finds that even if the Tenant took longer removing his vehicle, or did utilize the window on occasion to gain entry to the Rental Unit, such incidents do not justify the termination of the tenancy. The Landlord would have to provide written warning(s), perhaps attempt to retain the security deposit if any damage was caused at the end of the tenancy, but the remedy of terminating the tenancy agreement would not be appropriate in this case. Therefore, these reasons for termination of the tenancy agreement are denied.

Costs

- [50] The Tenant is seeking partial indemnity costs for the Application. Costs are a discretionary power granted to the Director under clause 85(1)(q) of the Act. The Officer notes that the Tenant could have represented himself in this matter, as a representative (legal or otherwise) is not required. The majority of parties represent themselves before the Rental Office, and it was the Tenant's choice to hire legal representation. Therefore, the Officer finds that costs are not appropriate in this case to be awarded. The Tenant's request for costs is denied.

Administrative Monetary Penalties

[51] The Tenant seeks an order that the Landlord pay an administrative monetary penalty pursuant to clause 93(1) of the Act. However, the Officer finds that clause 7(4) of the Act prohibits the Director from delegating the power to impose such administrative monetary penalties under clause 93. Therefore, the Officer does not have the legislative authority to grant such an order.

Conclusion

[52] The Application is allowed and the Notice is invalid without costs.

[53] The Officer does not have the legislative authority to impose administrative monetary penalties.

[54] The tenancy agreement between the parties shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

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

DATED at Charlottetown, Prince Edward Island, this 13th 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.