Introduction

[1] On May 6, 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 pursuant to the *Residential Tenancy Act* (the "*Act*") to dispute an *Eviction Notice* (Form 4(A)) dated April 21, 2024, effective June 1, 2024, (the "Notice"). The Notice was given to the Tenant for the following reasons:

> *You have permitted an unreasonable number of occupants in the rental unit;*
> *You have failed to comply with a material term of the tenancy agreement;* and
> *You have sublet the rental unit without the landlord's consent.*

[2] On May 21, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The two Landlords and the Tenant participated in the hearing.

[3] On March 21, 2024, the parties had a previous hearing regarding a dispute over an eviction notice for failing to pay rent and failing to pay the security deposit. On March 28, 2024, the Officer found that the notice was not valid and the tenancy agreement continued.

Issue to be Decided

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

Summary of the Evidence

[4] In August 2023, the parties entered into a written month-to-month tenancy agreement for the Rental Unit. Rent is $700.00 due on the 1st day of the month. A security deposit of $700.00 was paid.

Landlords Evidence and Submissions

[5] The Landlords submitted into evidence several documents including a copy of the tenancy agreement, emails, written submissions, electricity bills, and screenshots of devices connected to the wifi at the Rental Unit.

[6] The Landlords stated they served the Notice because the Tenant allowed his brother to live in the Rental Unit with the Tenant without the Landlords' permission. They stated they believe the Tenant's brother lived at the Rental Unit for at least a "few months." The Landlords stated the Tenant asked one of the Landlords if the Tenant's brother could move in but in an e-mail dated February 2, 2024, the other Landlord stated he did not agree to this request. They stated the Tenant was never given permission to allow his brother to move in.

[7] The Landlords stated by having an extra person living in the Rental Unit it increased the Landlords' costs and insurance liability. The Landlords stated the electricity bills show that during the time the Tenant's brother was living in the Rental Unit there was the same amount of electricity being used as when the Landlords previously had four tenants living there.

[8] The Landlords stated during the last eviction hearing between the parties on March 21, 2024, the Tenant stated the Tenant's brother was residing in the Rental Unit. They stated they observed a device attached to the Rental Unit's wifi called "Daniel's Android" and the Tenant's brother's name is Daniel. The Landlords submitted a copy of an email between the parties dated March 4, 2024, in which the Tenant stated *"My car my brothers car and my gf visiting. I don't have anyone else here my guy."*

[9] The Landlords stated 2 or 3 different cars are regularly observed parked at the property. They stated the day the Notice was posted at the Rental Unit, shoes belonging to a female and an unknown individual were observed in the mudroom. The Landlords stated the devices on the wi-fi were renamed so the Landlords would not know who was at the Rental Unit.

Tenant's Evidence and Submissions

[10] The Tenant submitted some photographs of empty rooms of the Rental Unit into evidence. The Tenant stated that his brother did live with him at the Rental Unit between February 2 and March 21, 2024. He stated his brother stored some items at the Rental Unit and slept on a couch a few days a week. He stated his brother is no longer living at the Rental Unit.

[11] The Tenant stated when he asked one of the Landlords if his brother could stay with him for a while, that Landlord stated it was good the Tenant was helping his brother. The Tenant stated he understood that to mean he had permission for his brother to move in. He stated he did not get a copy of the Landlord's email which stated he did not have permission. He stated his girlfriend never lived at the Rental Unit as she has her own residence. He stated his girlfriend does visit often and they both play X-box together, which would be the two X-box devices seen on the wifi. He denied changing the names of the devices on the wifi to trick the Landlords.

Analysis

Does the Tenant have to vacate the Rental Unit due to the Notice?

[12] 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. The relevant law is as follows:

> ***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;*
>
> *(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;* and
>
> *(i) the tenant purports to assign or sublet the rental unit without first obtaining the landlord's written consent as required by section 30.*

Unreasonable number of occupants

[13] The Tenant stated his brother stayed with him at the Rental Unit between February 2 and March 21, 2024, and that his girlfriend comes to visit him on a regular basis. The Officer finds that in this case, two extra individuals would not be considered an "*unreasonable*" number of occupants in the Rental Unit. The Officer notes that determining a reasonable or unreasonable number of occupants in the Rental Unit is not the same as determining how many people are permitted to live in the Rental Unit. The Officer finds the Landlords have not established the Tenant has breached clause 61.(1)(c) of the *Act*.

Material term and subletting

[14] The parties agreed the Tenant asked one of the Landlords on February 2, 2024, if his brother could move into the Rental Unit. That Landlord then emailed the other Landlord stating he thought it was a good idea and copied the Tenant on the message. The other Landlord replied that he did not agree with permitting the Tenant's brother to move in. The Officer notes the emailed reply sent by the Landlord stating he did not agree was not copied to the Tenant. Based on the email correspondence received by the Tenant, he would reasonably have believed permission had been granted.

[15] The Landlords stated although the Tenant was not copied on the Landlord's reply, the Tenant was advised at some date after February 2, 2024, that his brother was not permitted to stay at the Rental Unit. However, none of the parties were able to establish what date this had occurred. The Tenant stated he did comply with this request and his brother moved out of the Rental Unit on March 21, 2024, one month before the Notice was served.

[16] The Landlords stated they did not attend the Rental Unit between February 2, 2024, and April 21, 2024, but they have observed unknown devices connected to the wifi, unknown vehicles, and unknown shoes at the Rental Unit. However, the Officer finds the Landlords have not provided sufficient evidence, on a balance of probabilities, that the Tenant failed to comply with the Landlords' request within a reasonable time after being given notice to do so. The Officer notes the Landlords do have the ability to provide the Tenant with a 24-notice of inspection if they wish to verify who is living in the Rental Unit. The Officer finds the Landlords have not established the Tenant has breached clause 61.(1)(h) or (i) of the *Act*.

Filing of the Application

[17] The Officer notes that while drafting this Order a timing error was noticed which was not brought forward as an issue at the hearing. Clause 61.(5) of the *Act* states a tenant has 10 days to file an application to dispute an eviction notice. In this case, the parties agreed at the hearing the Notice was served and received on April 21, 2024, which means the Tenant had until May 1, 2024, to file the Application to dispute the Notice.

[18] The Application was filed on May 6, 2024, and was served to the Landlords on that date, which was five days later than what is allowed pursuant to the *Act*. The Application was accepted by the Rental Office in error, as it was past the 10-day deadline allowed by the legislation. The Notice of Hearing was mailed on May 10, 2024, the Evidence Package was emailed on May 17, 2024, and the hearing was held on May 21, 2024. During the hearing neither party brought up the timing of the filing of the Application as a preliminary matter and the matter proceeded to be heard on its merits, which is the practice of the Rental Office.

[19] The Officer notes that despite clause 61.(5), the Island Regulatory and Appeals Commission (the "Commission") has previously taken a "merits" based approach in previous orders.

[20] For example, in Order LR23-77, dated December 13, 2023, the Commission noted the tenant in that case had failed to file an application to dispute a notice of termination. The Commission made no comment regarding any deficiencies on the notice, but found that the notice was not valid based on the merits of the case and the tenancy agreement remained in effect. The Commission stated:

> *23. In the specific circumstances of this case, and in light of the Tenant's evidence explaining that she had not paid rent for two months because the Landlord had forgiven the outstanding rent payments, the Commission finds that the Tenant does not owe any amount to the Landlord for outstanding rent.*

24. Therefore, the Commission is not satisfied that the Landlord has established a valid basis for terminating the tenancy agreement due to non-payment of rent, because he told the Tenant that she did not owe rent for those months.

[21] When there is a dispute over a notice of termination, it is the landlord's burden to prove, on a balance of probabilities, that they have a valid reason for terminating the tenancy agreement. In this case, the Officer finds that the Landlords have not met the burden of proof and did not have valid reasons to issue the Notice. The Notice is not valid and the tenancy agreement continues in full force and effect.

Conclusion

[22] The Notice is not valid.

[23] The tenancy agreement shall continue in full force and effect.

[24] 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 7th day of June, 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 **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.