

INTRODUCTION

- [1] On April 26, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) to dispute an *Eviction Notice (Form 4(A))* dated April 17, 2024 for effect on May 31, 2024 (the “Notice”). The Notice was served to the Tenant on April 17, 2024 for the following reason:

You or someone you have allowed on the property have disturbed or endangered others.

- [2] On May 1, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on May 16, 2024, along with a copy of the Application.
- [3] On May 9, 2024 the Rental Office made an evidence package available to the parties (the “Evidence Package” or “EP”).
- [4] On May 16, 2024 a teleconference hearing was held with the parties before the Residential Tenancy Officer (the “Officer”) for determination of the Application. The Tenant and a representative of the Landlord (the “Representative”) participated in the hearing. At the hearing the parties confirmed receipt of the Evidence Package.

ISSUE

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

SUMMARY OF THE EVIDENCE

- [5] The Unit is a bachelor apartment located in a 48-unit building that the Landlord has operated since 1980, which is located beside another building operated by the Landlord (the “Residential Property”).
- [6] The Landlord and the Tenant entered into a written, month-to-month tenancy agreement that commenced on August 1, 2011. Rent in the amount of \$627.00 is due on the first of the month and a \$200.00 security deposit was paid.

Landlord’s Evidence and Submissions

- [7] The Landlord’s evidence is summarized as follows.
- [8] The Landlord’s position is that the Tenant has been engaging in behaviour that is harassing tenants and employees of the Landlord. The Landlord has previously given oral warnings to the Tenant.

- [9] The Representative is both an employee of the Landlord and a tenant of the Landlord. The Representative lives in a building connected to the Unit's building by an underground garage.
- [10] The Landlord submitted into evidence a first report dated March 20, 2024 signed by the Representative (EP 16). The reports states that two incidents occurred with the Tenant on this date involving another representative of the Landlord ("H"). The Tenant was loudly and aggressively telling H to put on a mask in the laundry room and yelling that H was putting the Tenant in danger. H telephoned the Representative and he was able to hear the Tenant over the phone. The Landlord does not have a mask policy.
- [11] The Representative later spoke with the Tenant and warned that he is not allowed to harass staff or residents. The Representative told the Tenant that this was his last warning. The Representative and the Tenant raised their voices during this discussion.
- [12] The Representative and the Tenant had good dealings for a period of time and it appeared that the issues had been resolved. However, the Representative received a complaint against the Tenant from another tenant of the Residential Property regarding the same sort of behaviour issues.
- [13] The Landlord submitted into evidence a second report dated April 17, 2024 signed by the Representative (EP 17). The report provides details of a tenant complaint received by the Representative. The report states that the Tenant was harassing one tenant in a hallway of the Residential Property and the Tenant yelled and made negative religious comments when another tenant intervened. After receiving this complaint, the Representative decided to serve the Notice.
- [14] The Representative provided evidence regarding the Tenant yelling and making negative religious comments towards the Representative at the time the Notice was served.
- [15] The Representative provided evidence of another incident near the garage of the Residential Property on May 8, 2024 where the Tenant made a religious quote in the presence of the Representative and his young daughter (EP 18 and 19). The Tenant stated part of the quote that is contained in the written report. The Representative's encounters with the Tenant make him feel unsafe and uncomfortable.
- [16] The Landlord submitted into evidence two emails and two written statements from three tenants of the Residential Property regarding the Tenant's behaviour.

Tenant's Evidence and Submissions

- [17] The Tenant's evidence is summarized as follows.
- [18] With regard to the incidents on the morning of March 20, 2024, the Tenant was in the laundry room first when H entered and moved within a foot of the Tenant. The Tenant asked H to stand back or put on a mask. At this point H roared at the Tenant and the Tenant roared back.
- [19] The Tenant stated that he is over 65, he has a weak heart after five heart attacks, and he would not do well if he got COVID. The Tenant stated that he previously had COVID and he almost lost his life. The Tenant stated that he currently has an infection.
- [20] With regard to the incident on April 16, 2024, the Tenant did make religious comments to another tenant. The Tenant did not agree that he made the specific comments contained in the Landlord's documentary evidence. The Tenant provided evidence regarding his earlier interactions with the other tenants. The Tenant stated that one of the tenants had a bad fall two months ago and the Tenant provided this tenant with help cooking and picking up things from the store.
- [21] The Tenant stated that the Representative made a negative religious comment to the Tenant around the time the Notice was served on April 17, 2024. The Tenant stated that he told the Representative to please leave.
- [22] With regard to the incident on May 8, 2024 with the Representative and his daughter, the Tenant denied that he stated the full quote that is contained in the Landlord's evidence (EP 18).
- [23] The Tenant did not receive a written warning regarding his behaviour before being served with the Notice.

ANALYSIS

- [24] For the reasons below, the Officer finds that the Notice is invalid. The evidence establishes that the Tenant has yelled at representatives of the Landlord and engaged in unwelcome behaviour regarding religious quotes. However, at this time the Tenant's behaviour has not reached the level of significant interference and unreasonable disturbance required by the *Act*.
- [25] In the Notice the Landlord seeks to end the tenancy agreement pursuant to clause 61(1)(d) of the *Act*, which states as follows:

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;*

[26] Section 22 provides details of a tenant's right to quiet enjoyment, stating as follows:

A tenant is entitled to quiet enjoyment of the rental unit including, but not limited to, the right to

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit, subject only to the landlord's right to enter the rental unit in accordance with section 23; and*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

[27] Section 25 provides details of a tenant's responsibilities regarding the quiet enjoyment of a landlord and other tenants, stating as follows:

The tenant and any person admitted to the residential property by the tenant shall not unreasonably interfere with the rights, quiet enjoyment and reasonable privacy of a landlord or other tenants in the residential property.

[28] The Notice was served in the context of a long term tenancy, with the Tenant having occupied the Unit for almost thirteen years.

[29] With regard to the incidents on March 20, 2024, the Tenant's evidence is that H moved close to the Tenant, who was concerned about his health and COVID-19 vulnerability. The Tenant also stated that during the incident H first raised his voice. The Officer notes that H did not participate in the hearing to provide his own account of what happened. Although the Representative heard part of the incident over the telephone, the Representative does not have direct evidence regarding this entire matter.

[30] Similarly, although the Representative has provided his direct evidence regarding part of the Tenant's behaviour, the other witnesses to the Tenant's behaviour did not participate in the hearing to directly provide their own word of mouth evidence.

- [31] The Landlord has not provided evidence that the Tenant was given a written warning before service of the Notice cautioning that his behaviour may lead to the termination of his tenancy agreement.
- [32] The evidence presented does raise significant concerns regarding the Tenant's behaviour. The Landlord provided evidence of multiple complaints that the Tenant has been yelling and making unwelcome religious quotes to occupants of the Residential Property and representatives of the Landlord.
- [33] However, the Officer finds that at this point the Landlord has not established that the Tenant's behaviour reaches the level of significant interference and unreasonable disturbance required by the *Act*. As a result, the Notice is invalid and the Application is allowed.

EVICITION NOTICE

- [34] The Officer notes that the Representative should have included the address of the Unit in the Notice (see section 53 of the *Act*). The Representative should also have printed the Landlord's corporate name on the Notice, in addition to his own printed and signed name as a representative of the Landlord.
- [35] The Notice served by the Landlord is an earlier version of the standard form. The current standard *Eviction Notice (Form 4(A))* is available on the Rental Office's website. The new standard form has a particulars section for details of a landlord's reasons for eviction.

WARNING TO THE TENANT

- [36] **The Tenant would be well advised to refrain from yelling or shouting at other occupants or representatives of the Landlord. The Tenant should also avoid coming in close contact with occupants and representatives of the Landlord when this behaviour is unwanted.**
- [37] **The evidence presented indicates that some of the religious quotes voiced by the Tenant in the Residential Property are unwelcome. The Officer notes that the *Act* requires all tenants to refrain from significantly interfering and unreasonably disturbing occupants and the landlord of a residential property.**
- [38] **If the Tenant engages in future behaviour that significantly interferes with or unreasonably disturbs representatives of the Landlord or occupants of the Residential Property, then the Landlord may decide to serve a further notice of termination to the Tenant.**

[39] **The Tenant would need to file a new application to dispute the notice within the ten-day deadline. Otherwise, the Act would deem that the Tenant accepts the end of the tenancy agreement and he would need to move out of the Unit.**

CONCLUSION

[40] The Notice is invalid and the Application is allowed.

[41] The tenancy agreement will continue in full force and effect and the Tenant may continue to reside in the Unit.

IT IS THEREFORE ORDERED THAT

1. The tenancy agreement will continue in full force and effect and the Tenant may continue to reside in the Unit.

DATED at Charlottetown, Prince Edward Island, this 24th day of May, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
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.