

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 7, 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 30, 2024 for effect May 31, 2024 (the “Notice”).
- [3] The Notice was posted to the Rental Unit’s door on April 30, 2024 for the following reasons:
- You have not repaired damage to the rental unit; and*
- There is an order requiring the rental unit to be vacated.*
- [4] The particulars of termination stated:
- “The Tenant has received a paper copy of instructions to help fix the bed bug issue, he did not comply. Then I spoke to the Tenant on the phone asking for him to comply. Pest Control went back there with no change in the Rental Unit. The bed bug company is stating the bugs are coming from the Rental Unit. They are helping, the Tenant is not.”*
- [5] On May 7, 2024 the Tenant mailed the Application to the Landlord.
- [6] On May 13, 2024 the Rental Office mailed the parties a notice of a teleconference hearing (the “Notice of Hearing”), along with a copy of the Application.
- [7] On May 21, 2024 the Evidence Package (the “EP”) was e-mailed to the Landlord. A hard copy was made available to the Tenant for pick-up at the Rental Office. The Rental Office also instructed the Landlord to serve a copy of the EP to the Tenant. The EP was posted to the Rental Unit’s front door. The EP contains 17-pages of documents, including the Notice of Hearing and the Application.
- [8] The Tenant did not pick-up the EP from the Rental Office. The Tenant admitted he is not currently at the Rental Unit, and did not receive a physical copy of the EP. The Tenant wished to proceed with the teleconference hearing, despite not having a copy of the EP.
- [9] On May 23, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant and the Landlord’s three representatives (the “Representatives”) participated.

Issue to be Decided

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

Summary of the Evidence

- [10] The Rental Unit is an apartment unit situated in a 21-unit apartment building (the “Residential Property”).
- [11] In November 2009 the Tenant and former landlord entered into an oral month-to-month tenancy agreement. In November 2023, the Landlord purchased the Residential Property and the tenancy continued. Rent is \$630.00 due on the first day of the month. No security deposit was required.

Landlord's Evidence and Submissions

- [12] The Representatives submitted 10-pages of documents into evidence including: a written submission, an invoice for bed bug services, an additional *Eviction Notice (Form 4(A))*, an e-mail complaint from another tenant, a written submission from the property manager, a written submission from one of the Representatives, a written submission from the Territory Manager from Truly Nolen Pest Control, an e-mail exchange with the Representatives, and a copy of the Bed Bug Service Preparation Checklist (the "Checklist").
- [13] The Representatives stated that the Residential Property has a serious bed bug infestation. The Representatives stated that the Rental Unit is where the infestation originated, and that the Tenant has not cooperated. The Representatives stated that the Residential Property, including the Rental Unit, has been sprayed five times since December 21, 2023. The Representatives stated that every tenant in the Residential Property received a copy of the Checklist. The Representatives stated that every tenant has complied and followed the Checklist but the Tenant. The Representatives stated that they were present for the December 21, 2023 spray at the Rental Unit. The Representatives stated that the Rental Unit was not prepared.
- [14] The Representatives stated that the Tenant has received the Checklist, and was reminded of the steps required to assist the Pest Control company in remediating the bed bug infestation. The Representatives stated that the Tenant does not always stay at the Rental Unit, and is difficult to contact at times.
- [15] The Representatives stated that they were not sure about the second Eviction Notice (page 9 of the EP) and that it may have been a clerical error. However, the issues and causes for the eviction remain the same in both the Eviction Notices.
- [16] The Representatives stated that the Tenant has neglected the Checklist recommendations causing increased expenses and delays. The Representatives stated that the Territory Manager provided an e-mail response to the Representatives stating:
- "With regards to the Rental Unit, there is a major issue with Bed Bugs in the unit and the Tenant has made no effort to aid the treatment. In order for our treatment to be most efficient and effective the Tenant should be cleaning the unit with a vacuum, at minimum, and washing/drying all clothes and linens with high heat..."*
- I feel that the Rental Unit is holding up the process for the rest of the building and subjecting the neighbouring units to continued stress and pest problems.*
- Since we began treatment December 21, 2023 there has been no participation from the Rental Unit despite the many notices given and requests for cooperation. This lack of cooperation is financially damaging as well to the Landlords as we will need to do continual treatments to prevent the other tenants from being adversely affected."* (page 13 of the EP)
- [17] Further, the Territory Manager provided this additional comment:
- "In the case of the Residential Property I believe most of the tenants are very motivated to be rid of this problem but I feel that the Rental Unit is holding up the process."* (page 17 of the EP).
- [18] The Representatives stated that they are receiving numerous complaints from other tenants in the Residential Property. The most recent complaints were the morning of the hearing date.
- [19] The Representatives admitted that there is no Order requiring the Rental Unit to be vacant.

Tenant's Evidence and Submissions

- [20] The Tenant did not submit any documents into evidence. The Tenant did participate at the hearing and provided the following oral submissions and response to the Landlord's evidence.
- [21] The Tenant examined the Representatives with a question regarding the Checklist and when and how it was provided to him. The Representatives responded that it was posted to the door of the Rental Unit sometime between December 17-19, 2023. Additional oral reminders were provided as well.
- [22] The Tenant stated that he never received the Checklist. The Tenant stated that if he did he would have done his best to follow the instructions. The Tenant stated that in early January 2024 the Representatives spoke to him about the Rental Unit being "ground zero" for the bed bugs. The Tenant stated that the Checklist was not mentioned and that the Representatives offered him money to vacate the Rental Unit.
- [23] The Tenant stated that he is not always present in the Rental Unit as he works a lot and sometimes stays with family. The Tenant stated that the Representatives do not communicate with him and have entered the Rental Unit without proper notice.

Analysis

The Eviction

- [24] The Application is made in accordance with clause 75 of the Act. The reasons for the termination of the tenancy are pursuant to clauses 61(1)(g) and (k) of the Act, which state:
- 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:*
- (g) *the tenant does not repair damage to the rental unit or residential property, as required under section 28(4), within a reasonable time; and*
- (k) *the rental unit is required to be vacated to comply with an order of a federal, Prince Edward Island or municipal government authority.*
- [25] Although the Notice had option (h) and (l) selected on the Notice, which are clauses 61(1)(g) and (k) respectively, the particulars of termination describe allegations which fall under option (e) on the Notice. Option (e) on the Notice is clause 61(1)(d) of the Act, which states:
- (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.*

The Officer finds that the Tenant was fully aware and understood that the primary issue for the Notice was the allegation that he was not cooperating with the remediation of bed bugs in the Rental Unit. Further, the Tenant provided oral submissions at the hearing in response to the Landlord's evidence and the Representative's testimony regarding the allegations best described under clause 61(1)(d) of the Act.

- [26] 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 claim.
- [27] For the reasons below, the Officer finds that the Notice is valid. The evidence establishes that the Tenant's lack of cooperation has seriously jeopardized the interest of the Landlord, other occupants and has put the Residential Property at significant risk which reaches a level that justifies the termination of the tenancy agreement.
- [28] The Tenant denied receiving the Checklist, and would have followed the instructions otherwise. The Representatives provided direct testimony that one of them posted the Checklist in a package on every door of the Residential Property, including the Rental Unit. The Representatives also provided testimony that was conflicting with the Tenant's testimony that they did have oral discussions with the Tenant about cooperating with the Pest Control company. Further, the Landlord submitted into evidence written submissions from the Territory Manager for Truly Nolen Pest Control. These submissions, although not affirmed, corroborate the Representatives' testimony that the Tenant was provided numerous notices, and was the reason for the delays.
- [29] The Officer finds that the Residential Property received five sprays, over a five-month period. The Officer finds that despite the conflicting testimony, the corroborating evidence and the length of the period of time that the infestation continued establishes that the Tenant knew or ought to have known their lack of action and/or presence at the Rental Unit contributed to the delay in remediation.
- [30] Therefore, the Notice is valid and the Application is denied. The tenancy agreement shall terminate effective 5:00 p.m. on June 7, 2024.

Conclusion

- [31] The Notice is valid and the Application is denied.
- [32] The tenancy agreement shall terminate effective 5:00 p.m. on June 7, 2024. The Tenant shall vacate the Rental Unit by this time and date.
- [33] This Order will be served to the parties by registered mail. The Order is deemed to have been provided three calendar days after the date of mailing.

IT IS THEREFORE ORDERED THAT

- I. The tenancy agreement shall terminate effective 5:00 p.m. on June 7, 2024. The Tenant shall vacate the Rental Unit by this time and date.
- II. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services in accordance with the Act.

DATED at Charlottetown, Prince Edward Island, this 24th 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 **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.