

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") disputing an *Eviction Notice* (Form 4(A)) dated and served on April 18, 2024 (the "Notice").
- [2] The Landlord left the effective date of the Notice blank.
- [3] The Notice was served to the Tenant for the following reasons:
- You are repeatedly late in paying rent;*
You or someone you have allowed on the property have disturbed, endangered others or put the landlord's property at significant risk; and
You or someone you have allowed on the property has caused damage to the rental unit.
- [4] The particulars of termination appear to state:
- "Upon inspection on April 13, 2024, we found most bedroom doors and the bathroom door, damaged with holes. Holes in the walls, uncleanly odor of animals. 4 animals in the unit, your application stated you have none. General uncleanliness, walls are dirty. Space in spare room. Fire hazard."*
- [5] On May 1, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on May 14, 2024, along with a copy of the Application.
- [6] On May 10, 2024 the Rental Office emailed a 41-page evidence package to the parties (the "Evidence Package" or "EP").
- [7] On May 14, 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.

Preliminary Matters

- [8] At the beginning of the hearing the Representative and the Tenant stated that, even though the effective date of the Notice was blank, the parties understood that the intended effective date is May 31, 2024. Therefore, the Officer amends the Notice to reflect this effective date pursuant to clause 85(1)(l) of the *Act*.
- [9] There is a typographical error in the written tenancy agreement regarding the name of the Landlord. The correct name of the Landlord is contained in this decision.
- [10] The Officer notes that, with regard to photographic evidence, the best practice is to date stamp each photograph at the time it is taken.

Issue to be Decided

- i. Does the Tenant and all occupants have to vacate the Unit pursuant to the Notice?

Summary of the Evidence

- [11] The Unit is a three-bedroom, one-bathroom unit located in a duplex building that the Landlord constructed approximately 18 years ago (the "Residential Property").

- [12] The Landlord, the Tenant and another tenant ("T") entered into a written, fixed term tenancy agreement for the period of November 1, 2019 to October 31, 2020. At the end of the fixed term the agreement continued on a month-to-month basis. Rent in the amount of \$1,076.96 is due on the first day of the month. A security deposit of \$650.00 was paid on October 15, 2019.
- [13] T moved out of the Unit over two years ago. At the hearing the Representative and the Tenant agreed that the Tenant is now the sole tenant of the Unit.

Landlord's Evidence and Submissions

- [14] The Landlord's evidence is summarized as follows.
- [15] The Representative stated that the Tenant never pays rent on time. There are some months that rent is paid on the seventh, eleventh and twelfth days even though rent is due on the first day of the month. On May 2, 2024 the Landlord served the Tenant with an eviction notice for non-payment of rent. This was the first termination notice served to the Tenant for non-payment of rent since the Tenant moved in. The Tenant paid the rent due the same day.
- [16] On October 18, 2019 another representative of the Landlord ("M") and the Tenant completed a condition inspection report, a copy of which was submitted into evidence (EP 35 and 39). The Representative stated that the Unit was in perfect condition at the beginning of the tenancy. The Unit was freshly cleaned and painted.
- [17] In 2022 M attended the Unit and spoke to T about the damaged doors and walls. M told T how to repair the damage. T told M that his uncle was a carpenter and he would fix the Unit's doors and walls.
- [18] T frequently attends the Unit. The Representative questions whether the damage only occurred before T moved out of the Unit.
- [19] The Representative estimates that the door replacement cost will be a minimum of \$100.00 per door. The Representative stated that the Tenant's security deposit will not cover this cost.
- [20] The Landlord did not inspect the Unit a lot until the Landlord started receiving frequent complaints from the tenant living in the other portion of the duplex ("D"). The complaints related to odours of garbage, dog and cat urine coming from the Unit.
- [21] The Representative stated that during an inspection on April 13, 2024 she was almost sick from the smell of the Unit. The Representative, another representative of the Landlord ("E"), and the Tenant completed an inspection report (the "Inspection Report"), which was submitted into evidence (EP36). The Representative stated that they told the Tenant that the repairs must be completed as soon as possible. About three weeks later the work had not been started.
- [22] The Representative submitted into evidence photographs of the damage (EP24 to EP33) taken by the Representative and M around May 2, 2024.
- [23] The Representative submitted into evidence a written statement from D dated May 7, 2024. This document provides complaints by D regarding smells coming from the Unit. D also stated that six car loads of garbage were removed from inside the Unit the day before the Landlord's inspection.
- [24] The Representative stated that there was another occasion that E visited the Unit and he had difficulty staying inside because of the smell.
- [25] The Landlord has been selling properties and intends to put the Unit on the market in the future.

Tenant's Evidence and Submissions

- [26] The Tenant's evidence is summarized as follows.
- [27] The Tenant stated that her rent is late sometimes. It takes the Tenant three pays or more to pay the rent by herself. On May 2, 2024 the Tenant received an eviction notice for non-payment of rent. This was the first time that the Tenant had received an eviction notice for non-payment of rent and the Tenant paid the full amount due the same day.
- [28] The Tenant stated that T damaged doors and walls in the Unit, starting in 2020 and ending in December of 2021, when T moved out. There has not been further damage to the doors or walls, except for one hole in the bedroom, which was unintentionally damaged by a bed frame.
- [29] In January of 2022 the Tenant and M discussed damage repairs. The Tenant stated that she was seeking a new tenancy agreement for subsidy purposes. The Tenant stated she was advised by M she could not get a new tenancy agreement until the repairs were completed. The Tenant could not afford the cost of the repairs. The Tenant tried to complete the repairs herself. The Tenant planned on having the repairs completed before she moved out of the Unit.
- [30] On April 13, 2024 the Tenant completed the Inspection Report with the Representative and E. The Tenant stated that she agreed to fix the damage. The Tenant stated that the Landlord wanted the repairs completed as soon as possible but she was not provided with a time frame for the work to be completed. The Tenant stated that she could now have the damage repaired in a week or two. The Tenant stated that her father has agreed to fix the walls properly.
- [31] The Tenant stated that her dog may have needed a bath at the time of the inspection. The Tenant stated that the cats' litterbox is always clean and there are a few empty litter boxes in the closet.
- [32] The Tenant stated that the master bedroom door, the bathroom door and a sliding hall closet door are damaged. One bathroom wall, one hallway wall and one bedroom wall are also damaged. The Tenant stated that the bathtub shelf is not damaged. There was candle wax which has been removed. The globe over a light mentioned in the Inspection Report fell randomly.
- [33] The Tenant submitted into evidence photographs of the Unit that she took after the inspection on April 13, 2024 (EP8 to 12, 15, 17 to 19).
- [34] The Tenant disputes claims made in D's written statement. The Tenant stated that she took two half-carloads of bagged up clothes and cardboard out of the Unit.
- [35] On one occasion E attended the Unit to fix a loose toilet that smelled of sewage and ammonia. The smell became worse and lasted for two or three days and then went away. The neighbours told the Tenant that they could also smell the odour.
- [36] T visits the Unit because he and the Tenant have a child together and T's current home is not suitable for the child. The Tenant works a lot and T helps watch the child.

ANALYSIS

Reason 1: Repeated Late Rent Payments

- [37] The Landlord's first basis for ending the tenancy is pursuant to clause 61(1)(b), which states:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(b) the tenant is repeatedly late in paying rent;

- [38] The evidence of the parties establishes that rent is due on the first day of the month and the Tenant has frequently paid rent after the first day of the month.
- [39] However, the evidence also establishes that the Landlord has accepted late rent payments over a significant period of time and the Landlord did not serve an eviction notice for non-payment of rent until May 2, 2024, after the Notice was served on April 18, 2024.
- [40] The Officer finds that by accepting the late rent payments and not serving termination notices, the Landlord has acquiesced (condoned) in the late payment of rent.
- [41] In these circumstances, the Landlord was required to first provide the Tenant with reasonable notice that the Tenant must strictly comply with the rent payment deadline of the first day of the month before serving an eviction notice for late payments. The legal term is called “equitable estoppel.”¹
- [42] The evidence establishes that the Landlord did not provide reasonable notice of strict compliance before serving the Notice. Therefore, the Officer finds that this basis for terminating the tenancy is invalid.
- [43] **The Officer finds that it is now clear that the Landlord requires strict compliance with the tenancy agreement regarding rent payments. Therefore, the Tenant must ensure that rent is paid in full by the first day of the month.**

Reason 2: Significantly Interfered

- [44] The Landlord’s second basis for ending the tenancy is pursuant to clause 61(1)(d), which states:

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;*

- [45] With regard to tenant-to-tenant complaints, the best practice is for a landlord to investigate the complaint in a timely manner. An investigation usually involves the landlord speaking to the tenants and occupants involved in the dispute, gathering documents and potentially conducting an inspection. After the investigation is completed, the landlord should document what occurred with written notes. If the investigation results in evidence that the complaint is valid, then the landlord should provide the tenant with a written warning.
- [46] Depending on the nature of the complaint, a single valid complaint may be sufficient to end a tenancy. In other cases, where the complaints are less extreme, it may be necessary to show multiple investigated complaints and written warnings in order to establish a level of behaviour breaching the “significantly interfered” or “unreasonably disturbed” standards in the Act.
- [47] With regard to Rental Office hearings, the best practice is for a landlord to have the complaining tenants telephone in and participate in the hearing. The tenants would solemnly affirm to tell the truth, provide their testimony, and be available to answer questions regarding their evidence. A landlord should also submit documents to the Rental Office in advance of the hearing that would

¹ See Order LD23-597 at the following website: <https://peirentaloffice.ca/wp-content/uploads/LD23-597.pdf>

be referred to by the occupants during the hearing. It is the responsibility of landlords and tenants to have their witnesses participate in a teleconference hearing, not the Rental Office.

- [48] In this case the Landlord has not followed these procedures.
- [49] The odour complaints against the Tenant are of a nature that the Landlord should have investigated the complaints in a timely manner and, if supported by the investigations, provide written warnings to the Tenant before serving an eviction notice.
- [50] D, a neighbouring tenant of the Residential Property, provided a written statement but did not participate in the hearing. The Tenant has disputed parts of D's evidence. D did not attend the hearing to provide affirmed testimony and answer questions.
- [51] Similarly, the Tenant has challenged the Representative's evidence regarding a visit to the Unit by E, who also did not participate in the hearing. The Tenant stated that E attended the Unit to address the Unit's bathroom toilet and a related odour, not the Tenant's pets.
- [52] Although the Representative has provided some direct evidence of bad odours in the Unit, the Tenant has provided photographs showing the inside of the Unit in a state of ordinarily cleanliness.
- [53] For these reasons the Officer finds that the Landlord has provided insufficient evidence to terminate the tenancy pursuant to clause 61(1)(d). The Landlord's second basis of termination is invalid.
- [54] A tenant's obligation to keep the Unit in a clean state is provided in subsection 28(3) of the *Act*, which states:

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; and

(b) proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.

- [55] The Tenant must maintain the cleanliness of the Unit in accordance with subsection 28(3) of the *Act*.

Reason 3: Damage

- [56] The Landlord's third basis for ending the tenancy is pursuant to clause 61(1)(f), which states:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(f) the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property;

- [57] The Tenant's direct evidence is that the damage to the doors and most of the walls occurred before December of 2021, almost 2.5 years ago. During the hearing the Representative questioned whether part of the damage occurred more recently, however, the Representative has limited direct evidence regarding more recent damage. Neither party submitted into evidence documentation recorded in 2022 regarding the extent of the damage at that time.

- [58] Based upon the evidence presented, the Officer accepts the Tenant's direct evidence that most of the damage in the Unit over 2.5 years ago. The Tenant has been living in the Unit and appears to have the best evidence regarding when the damage occurred.
- [59] The damage shown in the Landlord's photographs of the walls and doors is beyond reasonable wear and tear. Termination of a tenancy agreement for a breach of clause 60(1)(f) requires extensive damage. For lesser damage, a landlord must follow the procedure in clause 61(1)(g), which states:
- 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;*
- [60] It appears to the Officer that the door and wall damage is not so extensive to justify termination pursuant to clause 60(1)(f). Instead, the Landlord should have followed the procedure required by clause 60(1)(g).
- [61] In the context of most of the damage having occurred almost 2.5 years ago, the Tenant should have been provided with a reasonable time from the date of the April 13, 2024 inspection to repair the damage. Instead, the Landlord served the Notice on April 18, 2024, only five days after the inspection.
- [62] The Officer finds that the Tenant must have the following repairs completed by June 30, 2024, in a good and professional manner:
- a. Repair or replace the master bedroom door, bathroom door and the sliding hall closet door; and
 - b. Repair the bedroom wall, bathroom wall and hallway wall.
- [63] With regard to the "globe missing from the lights" in the Inspection Report, it has not been established that this damage was caused by the Tenant. Therefore, the Officer will not require this repair in this decision.
- [64] For the reasons above, the Officer finds that the third basis for termination is invalid.

Conclusion

[65] The Notice is invalid and the Application is allowed. The tenancy agreement will continue in full force and effect and the Tenant may continue to reside in the Unit.

[66] The Tenant must fulfill the obligations stated below.

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.
2. The Tenant must pay the monthly rent in full by the first day of the month.
3. The Tenant must maintain the cleanliness of the Unit in accordance with subsection 28(3) of the *Act*.
4. The Tenant must have the following repairs completed, in a good and professional manner, by June 30, 2024:
 - a. Repair or replace the master bedroom door, bathroom door and the sliding hall closet door; and
 - b. Repair the bedroom wall, bathroom wall and hallway wall.

DATED at Charlottetown, Prince Edward Island, this 27th 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.