

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 29, 2024, effective May 15, 2024, (the "Notice"). The Officer notes the correct effective date is May 31, 2024. The Notice was given to the Tenant for the following reasons:

You have permitted an unreasonable number of people in the rental unit;
You or someone you have allowed on the property have disturbed or endangered others;
You or someone you have allowed on the property have engaged in illegal activity on the property;
You or someone you have allowed on the property has caused damage to the rental unit;
You have failed to comply with a material term of the tenancy agreement; and
You have knowingly given false information about the rental unit.

- [2] On May 21, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Landlord Representative (the "Representative") and a Landlord Witness participated on behalf of the Landlord. The Tenant and two Tenant Witnesses participated on behalf of the Tenant.
- [3] The Representative stated two Notices had been given to the Tenant on April 29, 2024. One was served by him and one by another property representative. He stated the Notice served by him is the Notice he is relying on, as the other eviction notice stated "there is an order requiring the rental unit to be vacated." The Representative stated there is no order in place and that should not have been selected. On the Notice he served he did not select this option but did select the same reasons as the other notice as well as "you have knowingly given false information about the rental unit."

Issue to be Decided

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

Summary of the Evidence

- [4] On June 1, 2011, the parties entered into an oral month-to-month tenancy agreement for the Rental Unit, which is an apartment in a multi-unit building (the "Residential Property"). Rent is \$650.00 due on the 1st day of the month. A security deposit of \$650.00 was paid.

Landlord's Evidence and Submissions

- [5] The Landlord submitted into evidence several documents including photographs of the Residential Property, a written submission, a letter to the Tenant dated April 29, 2024, and repair invoices.

Representative's Testimony

- [6] The Representative stated the Tenant is allowing two of the Tenant's sons to attend the Residential Property and the Rental Unit and they are causing problems. He stated the issues have been going on for approximately four years. The Representative stated he has provided the Tenant with multiple oral and written warnings that the Tenant's sons are not allowed to be at the Residential Property or the Rental Unit. The Representative stated the Tenant has told him that he requires his sons' assistance to help look after him.

- [7] The Representative stated he has received noise complaints regarding the Tenant's sons from other tenants in the building and the Tenant's sons have caused damage to the Residential Property. He stated the Tenant will often invite his sons into the Rental Unit, they will get into an argument with the Tenant, and the Tenant will kick them out of the Rental Unit. He stated the Tenant's sons will sleep in the hallway of the Residential Property or they will bang on the Tenant's door until they are allowed back in. The other tenants in the building have complained to the Landlord and stated they are scared of the Tenant's sons.
- [8] The Representative stated he has had to call the police on the Tenant's sons and he has served the sons with no trespassing notices because of the problems they are causing. He stated the Tenant's sons have broken the front door of the Residential Property on several occasions. He stated as soon as the door is fixed and secured the Tenant's sons will damage the door again, making it unsecure. The Representative submitted photos of the door as well as repair invoices into evidence.
- [9] The Representative stated the Tenant's sons have also damaged a railing and fire alarm in the building and they have stolen fire extinguishers. Photographs of the railing and fire alarm as well as a repair invoice for the railing were submitted into evidence.

Landlord's Witness Testimony

- [10] The Landlord's Witness stated he does not live in the building but is a caretaker for the building. He stated he has observed the Tenant's sons causing problems in the Residential Property. He stated the Tenant is allowing his sons to attend the Rental Unit as he often observes his sons coming and going through the patio door of the Rental Unit. He stated he observed the Tenant's sons in the Rental Unit when the Tenant was in the hospital.
- [11] The Landlord's Witness stated he has witnessed the sons yelling and kicking at the Tenant's door. He stated the sons have broken into another unit in the building. He stated the Tenant's sons have been given two no trespass notices in the past two years prohibiting them from attending the Residential Property but they keep returning at the request of the Tenant.
- [12] The Landlord's Witness stated he has had to repair the front door of the building several times as well as a stair railing because of damage caused by the Tenant's sons. He stated he has repaired the front door several times but the Tenant's sons will keep damaging it, so it is always unsecure. He has observed the sons using drugs in the hallway of the building and has called police to remove them.

Tenant's Evidence and Submissions

- [13] The Tenant provided a written submission into evidence. He acknowledged that two of his sons are causing problems in the building but he denied inviting them into the building or the Rental Unit. He stated that if he sees them in the building he will tell them to leave and he should not be responsible for their actions. He stated the front door is not secure and other people are coming and going from the building as well. The Tenant acknowledged his sons were in the Rental Unit when he was in the hospital but denied giving them permission to be there.

Tenant's Witness Testimony

- [14] The Tenant had two witnesses testify on his behalf. The Tenant's Witnesses stated they both live in the building but they do not know who broke the front door. They stated the door is unsecure and homeless people often access the building. They stated not all of the damage to the building should be blamed on the Tenant's sons. One of the witnesses stated they observed the Tenant telling his sons to leave the building in the past. The same witness also stated they observed the Tenant's sons in the Rental Unit when the Tenant was in the hospital, but the witness did not know how the sons gained access to the unit.

Analysis

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

- [15] 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:

25. Tenant shall not interfere with quiet enjoyment of other tenants

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.

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;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant;
- (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;
- (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
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person.

Quiet Enjoyment

- [16] The Representative stated that the Tenant is allowing the Tenant's sons access to the Residential Property and they are causing damage to the building. He stated the sons are disturbing other tenants with noise, fighting, drug use, and by sleeping in the hallways. The Representative stated he has given the Tenant several verbal and written notices that his sons are not permitted onto the Residential Property, but the Tenant continues to permit them access. The Tenant did not deny his sons' actions or the damage caused, but denied allowing them into the building and stated he is not responsible for their actions.
- [17] The Officer notes that although the Tenant denied permitting his sons onto the Residential Property, the Representative testified he was told by the Tenant that the Tenant requires his sons to help care for him. The Landlord's Witness also testified he has regularly observed the Tenant's sons coming and going from the patio door of the Rental Unit. The Officer finds the Landlord has provided sufficient evidence to establish that the Tenant is permitting his sons on the Residential Property.
- [18] The Officer finds that the Landlord has established valid grounds for terminating the tenancy, pursuant to clause 61.(1)(d) of the *Act*. The Officer finds that the documentary evidence, and the testimony of the Representative and Landlord's Witness, provides convincing evidence to establish the justification for terminating the tenancy agreement.

Unreasonable Number of Occupants

- [19] The Officer finds the Landlord has not established that the Tenant has breached clause 61.(1)(c) of the *Act*. The Officer finds that allowing two extra individuals, despite the Landlord's testimony that those individuals were not permitted to be at the Rental Unit, in this case, would not be considered an "unreasonable" number of occupants.

Illegal Activity and Damage

- [20] The Officer finds the Landlord has not established that the Tenant has breached clauses 61.(1)(e) or (f) of the *Act*. The Representative stated the Tenant's sons caused damage to the property, which could be considered an illegal act. However, the Landlord has not provided sufficient evidence, such as direct witness testimony or video evidence, to establish it was the Landlord's sons who caused the damage.

Material Term

- [21] The Officer finds the Landlord has not established that the Tenant has breached clause 61.(1)(h) of the *Act*. The Representative did not submit into evidence copies of any written warnings he stated had been served on the Tenant, other than the one that was served with the Notice. The Officer finds the Landlord has not established the Tenant had been given a written warning and failed to correct the situation within a reasonable time.

False Information

- [22] The Officer finds the Landlord has not established that the Tenant has breached clause 61.(1)(j) of the *Act*. The Officer finds the Landlord has not provided any evidence showing the Tenant has given false information about the Residential Property to a prospective tenant, a purchaser viewing the residential property or another person.

Conclusion

- [23] The Notice is valid and the Application is denied.
- [24] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on June 7, 2024. The Tenant shall vacate the Rental Unit by this time and date.
- [25] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

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

DATED at Charlottetown, Prince Edward Island, this 30th day of May, 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 **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.