

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On February 22, 2024 the Landlord’s representative filed a *Landlord Application to Determine Dispute (Form 2(B))* making a claim against the security deposit. However, on February 27, 2024 the Landlord’s representative withdrew the application and returned the security deposit to the Tenants.
- [3] On February 28, 2024 the Tenants filed a *Tenant Application to Determine Dispute (Form 2(A))* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking compensation for a bad faith eviction.
- [4] On March 1, 2024 the Tenants electronically served the Application to the Landlord.
- [5] On March 22, 2024 the Rental Office provided the parties with the first notice of a teleconference hearing (the “Notice of Hearing”) by ordinary mail.
- [6] The Landlord’s representative requested the Rental Office adjourn the first Notice of Hearing date. The Rental Office allowed the adjournment.
- [7] On April 10, 2024 the Rental Office provided the parties with a second Notice of Hearing by ordinary mail.
- [8] On May 21, 2024 the Rental Office provided the parties with the evidence package (the “EP”) by e-mail. The EP contains 45-pages of documentary evidence.
- [9] On May 28, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenants, the Tenants’ representative, the Landlord and the Landlord’s representative participated in the hearing.

Preliminary Matter – Amending the named parties to the Application

- [10] The Application names the Landlord’s representative as the “respondent” and the “Landlord”. However, at the hearing, it was disclosed to the Officer that the Landlord’s representative’s daughter is the property owner and the landlord of the Rental Unit.
- [11] The Officer amends the Application to reflect the correct “respondent” and the “Landlord” for the purposes of this decision. Furthermore, the Officer corrects the spelling of the Landlord and the Landlord’s representative’s surname.

Issue to be Decided

- i. Have the Tenants established a valid claim for bad faith compensation?

Summary of the Evidence

- [12] The Rental Unit is situated in a unit within a triplex (the “Residential Property”).
- [13] The Tenants and the former landlord entered into a written, fixed-term tenancy agreement for the period of September 1, 2022 to September 1, 2023. The tenancy continued as a month-to-month agreement. The Landlord purchased the Residential Property in November 2023 and the tenancy continued on the same terms and conditions. Rent was \$1,600.00 due on the first day of the month with utilities included. A \$1,600.00 security deposit was paid in August 2022.

Tenants' Evidence and Submissions

- [14] The Tenants submitted 24-pages of documents into evidence including: a written submission, text messages, photos of a Facebook Marketplace advertisement, copies of e-transfer receipts, an Eastlink monthly statement, and the cost difference between living accommodations.
- [15] The Tenants submitted that on November 25, 2023 the Landlord's representative sent a text message which stated:
- Landlord's representative:**
"Good evening [Tenant] I hope everything is well with you. I'd like to let you know, I'm going to use the home for my family, can we meet to discuss that? I'm looking forward to meeting you."
- Tenant:**
"You are going to be kicking us out?"
- Landlord's representative:**
"I would like to meet both of you in person so we can discuss this. I understand you are both students and I don't want this affecting your studies. This won't be happening right now. I am not rushing it. That's why I would like to meet both of you in person. (14 of the EP)
- [16] The Tenants submitted that on December 7, 2023 they met the Landlord's representative and during that conversation the Landlord's representative proposed a \$300.00 rent increase. The Tenants submitted that they rejected the rent increase proposal.
- [17] The Tenants submitted that on January 7, 2024 the Landlord's representative contacted them again about the rent increase, and the parties agreed on the 3% annual allowable rent increase.
- [18] The Tenants stated that they never received any *Eviction Notice (Form 4(B))* from the Landlord's representative. The Tenants stated that the Landlord's representative's daughter was going to move into the Rental Unit. The Tenants stated that on January 15, 2024 they informed the Landlord's representative that they were moving out of the Rental Unit on February 1, 2024. The Tenants stated that they vacated the Rental Unit on January 31, 2024.
- [19] The Tenants submitted that on February 2, 2024 the Rental Unit was advertised on Facebook Marketplace for \$100.00 more in rent without utilities. The Tenants submitted that a friend of theirs reached out to the Landlord's representative and inquired about the Rental Unit. The Tenants submitted that the ad was for \$1,800.00 without utilities, with a year fixed-term agreement.
- [20] The Tenants stated that they have incurred costs for this bad faith eviction. The Tenants stated that they pay an additional \$250.00 a month for their new place, incur additional travel costs and paid approximately \$4,000.00 in furniture.

Landlord's Evidence and Submissions

- [21] The Landlord submitted 10-pages of documents into evidence which are a series of text message conversations.
- [22] The Landlord stated that she purchased the Residential Property in November 2023 with the intention of moving into the Rental Unit. The Landlord denied the Tenants' allegations that they were threatened with an eviction due to the rejection of the proposed rent increase.

- [23] The Landlord's representative stated that he was unaware of the rent control rules and he only increased the rent by the allowable 3% once he became aware.
- [24] The Landlord stated that she disputes the Tenants' characterization of the eviction. The Landlord stated that this was an agreement between the parties; however, the Tenants vacated early which changed the Landlord's timeline. The Landlord stated that she and her spouse were unable to move into the Rental Unit for February 2024. The Landlord stated that she had her own rental lease commitments. The Landlord stated that she had to advertise the Rental Unit and most prospective tenants wanted a fixed-term.
- [25] The Landlord admitted that new tenants moved into the Rental Unit at a higher rent (\$1,800.00). The Landlord stated she did not know about the rent control provisions of the Act.
- [26] The Landlord stated that she would look into the rental control provisions, and return the \$200.00 rent increase to the tenants and reduce the rent back to \$1,600.00.
- [27] The Landlord concluded her submissions with denying any bad faith eviction and that this was simply caused by the Tenants vacating earlier than expected and the Landlord's ignorance of the process.

Analysis

- [28] The Application is made in accordance with clause 75 of the Act and seeks a monetary claim against the Landlord pursuant to clause 65 of the Act. Clause 65 of the Act allows a tenant to make a monetary claim against a landlord if an eviction notice is served in bad faith for the landlord's use of property (clause 62), purchaser's use of property (clause 63) or demolition, conversion, repairs and renovations (clause 64). Service of a notice of termination is a required element for making a valid claim for bad faith compensation.
- [29] Clause 53 of the Act sets out the form and content requirements of a notice of termination, stating:

53. Form and content of notice of termination

In order to be effective, a notice of termination shall be in writing and shall

- (a) *be signed and dated by the landlord or tenant giving the notice;*
- (b) *give the address of the rental unit;*
- (c) *state the effective date of the notice;*
- (d) *except for a notice of termination under section 56, state the grounds for ending the tenancy;*
- (e) *be given to the other party in accordance with section 100; and*
- (f) *when given by a landlord, be in the approved form.*
- [30] The Officer finds that the undisputed evidence establishes that the Landlord or the Landlord's representative did not serve an *Eviction Notice (Form 4(B))* to the Tenants for "own use". The Landlord's representative's text message on November 25, 2023 vaguely points to the intention of family use for the Rental Unit.
- [31] Further, the Officer finds that the testimony regarding the oral conversation between the parties on December 7, 2023 has conflicting points regarding the motives and/or details surrounding the rent increase. However, what is not in dispute, is that the parties understood that the Landlord's representative's daughter (the Landlord) intended to move into the Rental Unit at some point after the Tenants completed their semester (sometime in May 2024).

- [32] Based on these facts, the Officer concludes that there is no document before the Officer that can be properly characterized as a notice of termination. The Officer has considered clause 30 of the *Interpretation Act*, RSPEI 1988, I-8.1 in making this determination.
- [33] In the book *Administrative Law in Canada* (Sara Blake, 7th ed., §4.03) the following is stated:
- “*Compensation may be not awarded without express statutory authority.*”
- [34] The Officer notes that clause 57 of Ontario’s *Residential Tenancies Act*, 2006, S.O. 2006, c.17 is similar to clause 65 of the Act. It appears that Ontario’s Landlord and Tenant Board has also found that service of a notice of termination is an essential element for awarding bad faith compensation (see the following Landlord and Tenant Board orders: 2011 CanLII 82126 (ONLTB) and 2012 CanLII 59945 (ONLTB)).
- [35] The Officer finds that, without service of a notice of termination, or a document that can be considered a notice of termination, the Officer does not have authority to award bad faith compensation pursuant to clause 65 of the Act. Therefore, the claim for bad faith compensation is denied.

Conclusion

- [36] The Application is denied.
- [37] This order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- A. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 5th day of June, 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 **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.