

**INTRODUCTION**

- [1] On May 15, 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 May 9, 2024 and effective June 30, 2024 (the "Notice"). On May 9, 2024 the Landlords sent the Notice to the Tenant by registered mail and it was received by the Tenant on May 14, 2024.
- [2] The Notice was served to the Tenant for the following reasons:
- You have permitted an unreasonable number of occupants 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 have failed to comply with a material term of the tenancy agreement; and*  
*You have knowingly given false information about the rental unit.*
- [3] On May 24, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for 9:00 a.m. on June 6, 2024, along with a copy of the Application.
- [4] On June 3, 2024 the Rental Office emailed a 40-page evidence package to the parties (the "Evidence Package" or "EP").
- [5] On June 5, 2024 the Rental Office emailed a 4-page supplementary evidence package to the parties (the "Supplementary Evidence Package" or "SEP").
- [6] On June 6, 2024 a teleconference hearing was held with the parties before the Residential Tenancy Officer (the "Officer") for determination of the Application. The Tenant, the Tenant's representative (the "Representative"), the Landlords and the Landlords' witness ("LW1") participated in the hearing. The parties confirmed receipt of the Evidence Package and the Supplementary Evidence Package.

**ISSUE**

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

**SUMMARY OF THE EVIDENCE**

- [7] The Unit has 1.5 bathrooms and it is located in a duplex building. The parties disagree on the number of bedrooms. The Landlords own a number of residential rental units that are located nearby the Unit in a subdivision (the "Residential Property").
- [8] The Tenant, another tenant and a family member of the Landlords entered into an oral, month-to-month tenancy agreement that commenced in the Spring of 2017. The Landlords' family member passed away in October of 2022 and the Landlords became the registered owner of the Unit on April 28, 2023. Rent in the amount of \$795.00 is due on the first day of the month and a security deposit was not required.
- [9] The other tenant moved out of the Unit during the Fall of 2023.

**Landlords' Evidence and Submissions**

- [10] The Landlords' evidence is summarized as follows.
- [11] The Landlords' position is that there are two bedrooms in the upper portion of the Unit and no bedrooms in the lower portion.
- [12] The Landlords position is that a couple and a child may be a reasonable number of occupants for the Unit. The Landlords do not believe that the lower portion of the Unit can be used as a bedroom for fire safety reasons.
- [13] The Landlords have received complaints that the Tenant has been sitting in his vehicle drinking excessively, the Tenant has been driving in the subdivision after drinking, and since receiving the Notice the Tenant has been sitting in a lawn chair drinking excessively.
- [14] The Landlords stated that they received complaints against the Tenant from another tenant in the neighbourhood that wanted to remain anonymous. The Landlords stated that on May 9, May 15 and May 19, 2024 they received complaints that the Tenant had been driving in the subdivision after drinking.
- [15] The Landlords have received complaints that the Tenant has been urinating in the Unit's driveway.
- [16] On April 30, 2024 the Landlords sent the Tenant a warning letter (EP11 to 13) that was received by the Tenant on May 7, 2024 (the "Warning Letter").
- [17] The Landlords submitted into evidence text message correspondence with T [a son of the Tenant] on May 8, 2024 (EP27 and 34), that states in part:

**T**

*"... ive been stayin with [Tenant] at [Unit] since he had his heart attack i read the letter you guys sent and a totally agree with everything on there and i had a big talk with him last night and told him he needs to get his shit together hes been hard on the beer and its not acceptable for anyone in the neighborhood i hope to get him back to normal sorry for all this mess he has been causing."*

...

**Landlords**

*"There have been several complaints from several ppl about [Tenant]. This is very concerning, especially with young children in the subdivision."*

**T**

*"Yup and I 100 percent agree with it all."*

- [18] The Landlords submitted into evidence another text message from T on June 3, 2024 (SEP4) that states in part:

*"... hope your selling cause the next tenants are gonna know how much rent we were payin."*

- [19] The Landlords submit that the phrase *"how much rent we were payin"* is an admission by T that he is paying rent to the Tenant. The Landlords stated that they never gave permission to the Tenant to sublet to T.

- [20] The basement of the Unit has been damp. The Unit's air circulation system has been disconnected, which will likely lead to mould damaging the Unit. The Landlords submitted into evidence a

photograph of the disconnected air circulation system taken by a contractor of the Landlords on May 13, 2024 (EP39). A contractor of the Landlords was also denied access to the Unit (EP21).

**LW1**

- [21] The evidence of the Landlords' witness, LW1, is summarized as follows.
- [22] LW1 stated that the details contained in her May 28, 2024 email to the Landlords (EP18 and 19) are accurate.
- [23] LW1 has lived in rental units of the Residential Property for 35 years. LW1 has lived in the rental unit neighboring the Unit since 1999. The last six years living next to the Tenant have been awful.
- [24] LW1 stated that she has directly witnessed the Tenant urinate outside of the Unit on four occasions. The most recent incident occurred the afternoon of April 27, 2024 when LW1 saw the Tenant urinating on the Unit's driveway.
- [25] LW1 stated that the Tenant has continued to urinate outside on a bush even after receiving the Warning Letter from the Landlords. LW1 stated that on June 3, 2024 LW1's husband told her that while going out to walk their dog he saw the Tenant urinate outside of the Unit. LW1 stated that she does not expect the Tenant's behaviour to improve because it has not improved even after being provided a written warning.
- [26] LW1 stated that it is unnecessary for the Tenant to be urinating outside because he could easily go into the Unit to use the bathroom.
- [27] LW1 stated that she has called the RCMP because she was concerned that the Tenant was drinking and driving. In October of 2023 LW1's husband saw the Tenant consume alcohol and then drive his vehicle. LW1 and her husband called the RCMP but they did not arrive until after the Tenant had returned to the Unit. After the RCMP left the Residential Property the Tenant lined his car up with beer cans and stood outside smiling.
- [28] LW1 stated that her grandchildren visit her but she is not comfortable letting them play outside in the front yard because of the Tenant.

**Tenant's Evidence and Submissions****Tenant**

- [29] The Tenant's evidence is summarized as follows.
- [30] The Tenant stated that, with regarding to urinating outside, it might have happened once. When asked by the Officer when this incident occurred the Tenant stated "*I can't remember.*"
- [31] The Tenant denies the drinking and driving allegations. The Tenant has had a driver's license for 45 years and has not lost it once.

**Representative**

- [32] The Representative's evidence is summarized as follows.
- [33] The Tenant's position is that there are two bedrooms in the upper portion of the Unit and one bedroom in the lower portion.
- [34] The Representative is a daughter of the Tenant. The Representative has never lived in the Unit. A son of the Tenant, T, and a granddaughter of the Tenant, B, currently live in the Unit with the

Tenant. T has lived in the Unit since the Fall of 2023 to help with the Tenant's medical challenges. Sometimes T's two children also stay overnight at the Unit.

- [35] The Representative stated that T was unable to participate in the teleconference hearing because he was working. T does not pay rent. T pays for the internet bill and some groceries.
- [36] The Officer referred the Representative to T's text message correspondence (EP27). The Representative stated that T was just agreeing that the Tenant has addiction challenges. T takes his own children to the Unit and therefore T is not concerned with the Tenant's behaviour. There are other neighbours nearby that come and visit the Tenant without issue.
- [37] The Representative submitted into evidence a letter from another occupant in the subdivision (EP9), which states in part:
- "...I can say I confidently feel [Tenant] does not endanger myself or my children while in the subdivision... I have not recognized any illegal activities happening at or around the property of [Unit]."*
- [38] The Representative stated that the Tenant never has his keys in the vehicle when he is drinking and therefore this behaviour is not illegal. The Tenant has been stopped by the police on numerous occasions, he's been tested and the tests have all been negative. The Tenant has never been charged with drinking and driving.
- [39] The Notice was served shortly after the Warning Letter was received by the Tenant.
- [40] The Tenant just learned that the air exchange system in the Unit was unplugged.

## ANALYSIS

- [41] Based upon the evidence presented, it appears that the Tenant is the sole tenant of the Unit in relation to the Landlords. The other persons currently living in the Unit (T and B) are occupants in relation to the Landlords.
- [42] In this decision it is unnecessary for the Officer to determine whether there is a sublet tenancy agreement between the Tenant and T. The Officer notes that subletting without the Landlords' consent was not selected as a basis for termination in the Notice.
- [43] One of the reasons that the Landlords seek to end 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;*

- [44] Clause 61(1)(d) does not require a written warning in advance for a valid eviction notice. Clause 61(1)(h), ending a tenancy for breach of a material term of the tenancy agreement, does require written notice in advance of an eviction notice.
- [45] With regard to the complaints of the Tenant urinating outside of the Unit, the Officer finds the evidence of the Landlords' witness, LW1, to be more credible. LW1 provided detailed and

consistent evidence when she provided her testimony and responded to questions during the hearing. It appeared to the Officer that LW1 had a good recollection of the events that occurred regarding the Tenant. LW1 provided evidence that was focused on the events that occurred and the negative impact on her life.

- [46] With regard to the complaints of urinating outside the Unit, the Tenant gave an equivocal response that maybe this behaviour occurred on one occasion. The Officer asked the Tenant when this occasion occurred and the Tenant stated that he could not remember.
- [47] Based upon the evidence presented, the Officer finds that LW1 witnessed the Tenant urinate outside of the Unit on four occasions, with the most recent occurrence being April 27, 2024. The Officer infers that there are other occasions that the Tenant has urinated outside of the Unit that were not witnessed specifically by LW1.
- [48] The Officer makes this finding based upon the testimony of LW1 and the Tenant. However, the Officer notes that the content of T's text messages with the Landlords appear to corroborate this finding. T has lived in the Unit since the Fall of 2023. The Warning Letter contained a complaint that the Tenant was "*Urinating in the driveway located at [Unit].*" In a text message on May 8, 2024 T stated in part "*...i read the letter you guys sent and a totally agree with everything on there...*"
- [49] The Representative provided evidence that T was acknowledging the Tenant's addiction challenges in the May 8, 2024 text messages. However, upon reviewing the messages and other evidence it appears to the Officer that T was making a broader acknowledgement of the Tenant's problematic behaviour.
- [50] The Officer finds that by urinating in the Unit's driveway on multiple occasions, the Tenant has significantly interfered and unreasonably disturbed the quiet enjoyment of LW1. Public urination on residential rental property is behaviour that the Tenant ought to have known was unacceptable, without warning. The Tenant had two bathrooms in the Unit that could have been used instead. The Officer therefore finds that the Landlords had a valid basis for ending the tenancy.
- [51] The Tenant provided evidence that there are some neighbours that have positive interactions with the Tenant and visit the Unit. However, it appears to the Officer that such interactions co-exist with the Tenant engaging in behaviour that has breached clause 61(1)(d) of the *Act*.
- [52] As the Landlords have established a valid reason for ending the tenancy, the Officer will not determine the Landlords' other reasons for ending the tenancy. However, the Officer notes that part of the Landlords' evidence regarding the Tenant allegedly driving impaired was anonymous text messages (paragraph [14]). This type of evidence would not have helped the Officer's determination of the driving impaired allegations and the Officer would have given this evidence no weight.
- [53] The best practice is to have witnesses participate in the Rental Office teleconference hearing, as was arranged by the Landlords regarding their witness, LW1.

**CONCLUSION**

[54] The Notice is valid and the Application is denied.

[55] The Tenant and all occupants (including T and B) must vacate the Unit by the timeline below.

**IT IS THEREFORE ORDERED THAT**

1. The tenancy between the parties shall terminate effective **5:00 p.m. on June 30, 2024**. The Tenant and all occupants (including T and B) must vacate the Unit by this time and date.
2. 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 12th day of June, 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 **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.