

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 17, 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 May 10, 2024, for effect June 10, 2024, (the “Notice”).
- [3] The Notice was posted to the door of the Rental Unit on May 10, 2024, for the following reason:
- You have failed to comply with a material term of the tenancy agreement.*
- [4] On May 16, 2024, the Tenant had e-mailed the Application to the Landlord before filing with the Rental Office.
- [5] On May 24, 2024, the Rental Office mailed and e-mailed the parties a notice of a teleconference hearing (the “Notice of Hearing”), along with a copy of the Application.
- [6] On June 5, 2024, the Evidence Package (the “EP”) was e-mailed to the parties. The EP contains 34-pages of documents, including the Notice of Hearing and the Application.
- [7] On June 6, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant and the Landlord’s three representatives (the “Representatives”) participated.

Preliminary Matter

- [8] The Notice was dated May 10, 2024, for effect June 10, 2024. As the Notice is required to be effective not earlier than one month after the Notice is served and be the day before rent is due, the effective date of the Notice is automatically changed to June 30, 2024, pursuant to clause 54 of the *Act*.

Issue to be Decided

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

Summary of the Evidence

- [9] In July of 2015 the parties entered into a written month-to-month tenancy agreement for the Rental Unit that commenced on September 1, 2015. The Rental Unit is an apartment located in a 20-unit apartment complex (the “Residential Property”). Rent is \$1,019.00 due on the first day of the month. A security deposit of \$459.00 was paid.

Landlord’s Evidence and Submissions

- [10] The Representatives submitted 26-pages of documents into evidence including: a written submission, photographs of the Rental Unit, messages between the parties, and a copy of the tenancy agreement. The Representatives stated on May 6, 2024, the tenants in the Residential Property were emailed to advise them that the annual inspection for the units would begin on May 9, 2024. The Tenant replied requesting that her inspection take place on May 10, 2024.

- [11] The Representatives stated on May 10, 2024, the Rental Unit was inspected and it was found that the unit smelled of rotten food and cat urine. It was determined that the electricity was off and spoiled food was found in the fridge and freezer. They stated the unit was dirty and in disarray and there were items strewn all through the unit. They stated some walls had holes and had been poorly repaired.
- [12] The Representatives stated they contacted Maritime Electric who advised them that the electricity had been turned off since April 10, 2024, due to non-payment by the Tenant. They stated they paid the arrears so the electricity could be turned back on at the Rental Unit. They spoke with the Tenant about the condition of the Rental Unit and told her that it needed to be cleaned up and served the Tenant with the Notice.
- [13] The Representatives stated the fridge, stove, and carpets will have to be thrown out. The fridge cannot be cleaned because the spoiled food damaged the fridge. The stove is dirty and cannot be cleaned and the carpets are dirty and smell of cat urine. They stated a restoration company will be required to do renovations due to the damage at the property.
- [14] The Representatives stated on June 2, 2024, the Tenant was sent an email advising her that there would be another inspection at the Rental Unit on June 4, 2024. They stated during this inspection the condition of the unit was found to be the same as May 10, 2024, except some of the items in the fridge had been discarded. There were still items strewn about and there was still a foul odor in the unit. Photographs were taken of the unit during this inspection and the photographs were submitted into evidence.

Tenant's Evidence and Submissions

- [15] 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 Representatives' evidence.
- [16] The Tenant stated she does not always stay in the Rental Unit and she often stays with her boyfriend. She stated in April 2024 she had to pay to get her car out of impound and she was unable to pay the electricity bill as a result. She stated she has been going through a tough time with her mental health and she is trying to declutter the unit.
- [17] The Tenant stated she spoke to the Representatives on May 10, 2024, and acknowledged the Representatives considered the Rental Unit unclean. She stated she understood that she was expected to clean up the unit if she wanted to remain living there and that was the reason she was served the Notice. She stated between the first and second inspections she did clean some of the unit such as the fridge, freezer, and windows. She stated she also discarded some clothes and she patched some holes in the walls.

Analysis

- [18] The only reason in the Notice for the termination of the tenancy is pursuant to clause 61.(1)(h) of the *Act*, which states:

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:

(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.

- [19] Based on the evidence provided, the material term of the tenancy agreement the Representatives are alleging the Tenant has failed to comply with is clause 28.(3)(a) of the *Act* which states:

28. Tenant responsible for ordinary cleanliness

(3) 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.

- [20] The Application is made in accordance with clause 75 of the *Act*. 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 and convincing evidence to support the claim.
- [21] The evidence establishes that the Tenant was notified during the first inspection on May 10, 2024, that the Representatives considered the Rental Unit to be below the standard of ordinary cleanliness. The Tenant stated she was served with the Notice and the Representatives spoke to her and notified her she was required to clean the Rental Unit if she wanted to continue living in the unit. A second inspection was conducted at the Rental Unit on June 4, 2024, and the Representatives stated that the Rental Unit was still below the standard of ordinary cleanliness.
- [22] When a landlord is seeking to end a tenancy for a breach of a material term of a tenancy agreement, a landlord must first provide the tenant written notice of the breach and a reasonable timeframe to correct the situation. This written notice will often be in the form of a letter addressed to the tenant. A valid eviction notice can only be served after the written notice is served and a reasonable opportunity to correct the situation has passed.
- [23] In this matter, the Notice was served to the Tenant at the same time the alleged breach was discovered by the Representatives. The Officer finds that the Notice should not have been served until after the Tenant had been given a reasonable time to correct the situation.
- [24] The Landlord's evidence indicates that the Tenant has damaged the unit. However, the Landlord did not select damage on the Notice as a basis for termination. The Officer is unable to consider this damage as basis of termination due to this omission.
- [25] The Landlord used an earlier version of the Eviction Notice Form 4(A) which does not have a section for particulars of termination. The Notice served by the Landlord is an earlier version of the standard form. The current standard Eviction Notice (Form 4(A)) is available on the Rental Office's website. The new standard form has a particulars section for details of a landlord's reasons for eviction.
- [26] The Officer finds that the Representatives did not serve the Notice in accordance with clause 61.(1)(h) of the *Act*. Therefore, the Officer finds that the Notice is not valid and the tenancy shall continue.
- [27] The Officer notes that the Tenant is required to maintain the ordinary cleanliness of the Rental Unit. If the Landlord finds that the Tenant has not complied their obligations under the tenancy agreement or the *Act*, the Landlord may serve the Tenant with a notice of termination in accordance with the *Act*.

Conclusion

- [28] The Notice is not valid and the Application is allowed.
- [29] The tenancy agreement shall continue in full force and effect.
- [30] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 14th day of June, 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 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.