

Introduction

- [1] On June 4, 2024, the Landlord's Representative (the "Representative") filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks an earlier termination of the tenancy agreement pursuant to the *Residential Tenancy Act* (the "Act").
- [2] As the parties are prohibited from having direct contact with each other, a paper-based hearing was scheduled for June 14, 2024.
- [3] On June 6, 2024, a Notice of Hearing for a paper-based hearing was sent to the parties. The Landlord had until June 10, 2024, to submit their evidence.
- [4] On June 12, 2024, the Landlord's evidence was provided to the Tenant. The Tenant had until June 13, 2024, to submit evidence.
- [5] On June 13, 2024, the Tenant's evidence was provided to the Landlord. On June 14, 2024, the Landlord provided a response to the Tenant's evidence. On June 17, 2024, the Landlord's response was sent to the Tenant. No further submissions were requested.

Issue to be Decided

- i. Is an earlier termination of the tenancy agreement warranted?

Summary of the Evidence

- [6] On January 15, 2024, the parties entered into an oral month-to-month tenancy agreement for the Rental Unit, which is a downstairs apartment in a two-unit building (the "Residential Property"). Rent is \$1,200.00 due on the first day of the month and a security deposit of \$1,200.00 was paid.

Landlord's Evidence and Submissions

- [7] The Representative submitted 23 pages of documents into evidence including photographs, medical records, a letter from the Charlottetown Police, messages between the parties, and a voicemail sent by the Tenant complaining about the upstairs tenants being noisy. The Representative's evidence is summarized as follows.
- [8] On May 23, 2024, he served the Tenant with an eviction notice, effective June 30, 2024, and a photograph of the Notice on the Tenant's door was submitted into evidence. He has received several noise complaints from the upstairs tenants regarding the Tenant yelling and banging in the Rental Unit. The Tenant has opened the electrical panel and interfered with the breakers and the Tenant has nailed shut the emergency doors for the upstairs apartment. The Tenant smokes marijuana in the unit and this disturbs the other tenants.
- [9] On June 3, 2024, the upstairs tenants notified the Representative that the Tenant was yelling and banging on their door. The Representative and his wife attended the unit to speak to the Tenant but the Tenant yelled at them and closed the door. They knocked on the door again and the Tenant opened the door and hit the Representative in the head with a hammer. He did not push the Tenant and he did not enter the Rental Unit.
- [10] The Representative contacted the Charlottetown Police and the Tenant was arrested and later released on an Undertaking not to have any contact with the Representative or the upstairs tenants. The Representative attended the hospital for a head injury and copies of the Representative's medical records as well as photographs of the injury were submitted into evidence.

- [11] The Representative submitted a letter from the Charlottetown Police into evidence. The letter stated police had attended the Rental Unit on April 5, April 6, May 15, and May 16, 2024, as a result of noise complaints from the upstairs tenants. The letter also stated on June 3, 2024, police attended the Rental Unit as a result of the Respondent's assault complaint and the Tenant was arrested.

Tenant's Evidence and Submissions

- [12] The Tenant provided a written submission into evidence and his evidence is summarized as follows: The Representative attended his unit with his wife and they pushed and grabbed the Tenant when he tried to close the door. The Representative's wife broke his watch strap. The Tenant grabbed a 16 oz hammer and hit the Representative as they did not have permission to enter the Rental Unit.
- [13] The medical records do not indicate why he was upset that day. The upstairs tenants often make noise and he is unable to sleep as a result. The upstairs tenants may have taken \$800.00 worth of cannabis accessories from him. It is cold in his unit and the Landlord will not fix the heat and he often yells "please turn on the heat" but he is ignored.

Analysis

Is an earlier termination of the tenancy agreement warranted?

- [14] The Application is made in accordance to section 75 of the *Act* and seeks an earlier termination of the tenancy agreement and possession of the Rental Unit. The relevant law is as follows:

Landlord may request earlier termination date

- (7) *Despite subsection (3), a landlord who wishes to give notice of termination under subsection (1) may make an application to the Director to request an order*
- (a) *ending a tenancy agreement on a date that is earlier than the tenancy would end if the notice of termination were given under subsection (1); and*
 - (b) *granting the landlord an order of possession in respect of the rental unit.*

Requirements for earlier period of notice

- (8) *The Director shall grant an application under subsection (7) only if the Director is satisfied that*
- (a) *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,*
 - (iii) *put the landlord's property at significant risk,*
 - (iv) *engaged in illegal activity that*
 - (A) *has caused or is likely to cause damage to the landlord's property,*
 - (B) *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*
 - (C) *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord,*

- (v) *caused unreasonable damage to the residential property, or*
- (vi) *frustrated the tenancy agreement; and*
- (b) *it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice of termination under subsection (1) to take effect.*

[15] The Application seeks a determination that the tenancy agreement be terminated earlier than what would normally be required for a for-cause eviction. In such applications, it is the Landlord's burden to prove, on a balance of probabilities, the two requirements set out in clauses 61.(8)(a) and (b). This means the Landlord must provide sufficiently clear and convincing evidence that first the Tenant has breached one of the listed reasons in clause 61.(8)(a). Second, the Landlord must establish that it would be unreasonable or unfair to the Landlord or other occupants of the Residential Property to wait for a notice of termination to take effect as required by clause 61.(8)(b).

The First Requirement

[16] On June 3, 2024, the upstairs tenants had complained that the Tenant was yelling and banging on their door. The Representative and his wife attended the Rental Unit to speak with the Tenant. The Tenant submitted the Representative and his wife pushed him and grabbed him. The Representative disputed he pushed the Tenant or that he entered the Rental Unit. Both parties provided evidence that the Tenant hit the Representative on the head with a hammer.

[17] The Officer is satisfied that the Landlord has established a valid basis for earlier termination. The Officer finds the Landlord has provided sufficient evidence, specifically the submissions of the parties, the photographs, the medical records, and the letter from police, to establish that the Tenant has "*seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*"

The Second Requirement

[18] After considering the facts of this case and reviewing the documentary evidence, the Officer finds that the Landlord has established the second requirement. The Officer finds that due to the severity and seriousness of the Tenant's actions it would be unfair or unreasonable to the Landlord to wait longer for an eviction. Therefore, the Officer is satisfied that the Landlord has established the second requirement prescribed in clause 61.(8)(b).

[19] The Officer finds the Landlord has established valid grounds for an earlier termination of the tenancy agreement and the Application is allowed. The tenancy agreement shall terminate effective June 25, 2024, at 5:00 p.m.

Conclusion

[20] The Application is allowed.

[21] The tenancy agreement shall terminate effective June 25, 2024, at 5:00 p.m. The Tenant shall vacate the Rental Unit by this date and time.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement shall terminate effective June 25, 2024, at 5:00 p.m. The Tenant shall vacate the Rental Unit by this date and time.
- 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 18th 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 (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.