

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 3, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) disputing an eviction notice. The Application also seeks repairs in the Rental Unit.
- [3] On June 3, 2024 the Tenant hand delivered the Application to the Landlords.
- [4] The Application was supported by a *Form 4 (A) Eviction Notice* (the “Notice”).
- [5] The Notice dated May 27, 2024 effective June 30, 2024 was served by the Landlord to the Tenant by posting the Notice to the front door of the Rental Unit for the following reason:
1. *You have sublet the rental unit without the landlord’s consent.*

The particulars of termination state:

“You have been renting out rooms, subletting, without permission from myself or the previous landlord. On top of subletting without landlord permission, it is against the law to charge more than your total rent when subletting.”

- [6] On June 5, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [7] On June 14, 2024 the Rental Office emailed the parties a 15-page evidence package (the “EP”).
- [8] On June 18, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant, a witness for the Tenant (“TW”), one of the Landlords (the “Landlord”) and a witness for the Landlords (“LW”) participated.

Preliminary Matters

- [9] At the beginning of the hearing, the Officer noted that the Notice was not included in the EP. The Notice was included with the Application, and the Rental Office had a physical and electronic copy in the file. However, in error, the Notice was not included in the EP.
- [10] The Officer confirmed that the Notice was part of the evidentiary record, and that both the Tenant and the Landlord had their own copies of the Notice.
- [11] Further, at the beginning of the hearing, the Tenant and the Landlord confirmed with the Officer that they both received the EP and had an opportunity to review it. Despite this confirmation, the Tenant midway through the hearing, informed the Officer that she in fact did not have a copy of the EP.
- [12] The Officer adjourned the hearing temporarily. The Landlord hand delivered a copy of the EP to the Tenant at the Rental Unit. The Tenant reviewed the EP and the hearing continued.

Issues

- i. Must the Tenant vacate the Rental Unit due to the Notice?
- ii. Must the Landlords repair the Rental Unit?

Summary of the Evidence

- [13] The Rental Unit is a three-bedroom and one-bathroom townhouse.
- [14] The Tenant has lived at the Rental Unit for almost 14-years. The Tenant and the former landlord had an oral, month-to-month tenancy agreement. The Landlord purchased the Rental Unit in May 2023 and the tenancy continued. Rent is \$780.00 due on the first day of the month. No security deposit was required.

Landlords' Evidence and Submissions

- [15] The Landlords submitted 8-pages of documents into evidence including: copies of e-transfer receipts from the subtenants, and written submissions from two of the subtenants and a written submission from the former landlord, LW.
- [16] The Landlord stated that the Tenant is subletting the Rental Unit without permission and is charging her subtenants an illegal amount of rent.
- [17] The Landlord lives in one of the townhouses close to the Rental Unit. The Landlord stated that he has witnessed the same people coming and going from the Rental Unit. The Landlord did not ask the Tenant about the occupants or warn the Tenant about the issue as the Landlord stated he was gathering more information. Once he confirmed the subtenancy and rent charged, he served the Tenant with the Notice.
- [18] The Landlord stated that he has inspected the Rental Unit and while there he talked to the subtenants. The Landlord stated that this is how he got the subtenants' written submissions.
- [19] The Landlord stated that the Tenant never asked if she could sublet the Rental Unit and the bigger issue was the rent charged to the subtenants.
- [20] With regard to the repairs claim, the Landlord stated that he was not aware of the closet doors needing to be fixed and is not disputing having them repaired. The Landlord stated that he was aware of the tap dripping, and just has not got to repairing it yet. The Landlord stated that the patio door has been repaired, however, the Tenant's dogs cause the specific part in question to dent and there is nothing more he can do, but the patio door is functional.
- [21] LW stated that he is the former landlord and was the one who entered into the tenancy agreement with the Tenant. LW stated that he never gave the Tenant permission to sublet the Rental Unit. LW stated that he permitted the Tenant's grandson to live at the Rental Unit and he did not complain if the Tenant had guests.

Tenant's Evidence and Submissions

- [22] The Tenant submitted a written submission with the Application.
- [23] The Tenant stated that she is a senior with some health complications who does not like to live alone. The Tenant admitted to having a couple live in one of the bedrooms. It was supposed to be just the man, but his partner moved in and the Tenant did not object.
- [24] The Tenant stated that she allowed two brothers who are students to move into the other room because they did not have a place to live.

- [25] The Tenant stated that she does not know what subletting means and described the couple and the brothers as “boarders”. The Tenant stated that the former landlord knew that she had boarders and allowed it. The Tenant stated that the former landlord knew and allowed her grandson to live in the Rental Unit and the Tenant did not know the rules changed with the new owner.
- [26] The Tenant stated that she did not know about the rules regarding charging rent. The Tenant stated that she cooks and does laundry for the two brothers. The Tenant stated that the two brothers often would go to the kitchen and were allowed to have whatever food they wanted.
- [27] The Tenant stated that the Landlord has not repaired the two closet doors in the hallway, a drip in one of the taps and the patio door. The Tenant stated that she informed the Landlord of these issues and she was served the Notice shortly after. The Tenant stated that the Landlord is not acting in good faith.
- [28] The Tenant stated that all the boarders are leaving the Rental Unit by today, June 20, 2024.
- [29] TW stated that she visits the Tenant at the Rental Unit regularly, and has witnessed the brothers in the kitchen getting food provided by the Tenant.

Analysis

i. Must the Tenant vacate the Rental Unit due to the Notice?

- [30] The Tenant filed the Application in accordance to clause 61(5), pursuant to clause 75 of the Act, disputing the Notice. The Landlords reason for terminating the tenancy is pursuant to clause 61(1)(i) of the Act, which state:
- 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:*
- (i) *the tenant purports to assign or sublet the rental unit without first obtaining the landlord’s written consent as required by section 30.*
- [31] Clauses 30(1) and (8) of the Act state:
- 30. Tenant may sublet or assign rental unit with landlord’s consent**
- (1) *A tenant may, with the written consent of the landlord, sublet or assign a rental unit or part of a rental unit to another person.*
- Rent payable under a sublet**
- (8) *A tenant*
- (a) *shall not charge a subtenant more rent than is payable under the tenancy agreement; and*
- (b) *where the tenant and the subtenant occupy the rental unit, shall not charge the subtenant more rent than the amount represented by the rent payable under the tenancy agreement, either*
- (i) *divided by the number of tenants during the subtenancy, or*
- (ii) *apportioned among the tenants in a manner agreed to by them.*
- [32] The Landlords bear the onus of proving their 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 alleged claim against the Tenant.

- [33] For the reasons below, the Officer finds that the Notice is dismissed, the Application is allowed and the tenancy shall continue.
- [34] The Officer finds that the Tenant did not dispute that subtenants, or as she described them as the “boarders”, lived at the Rental Unit.
- [35] The Tenant, Landlord and LW did, however, provide conflicting testimony regarding whether or not permission was given for the Tenant to sublet rooms in the Rental Unit.
- [36] On this point, the Officer finds that the evidence presented at the hearing establishes that the Landlord and the former landlord did not give the Tenant permission to sublet rooms in the Rental Unit. However, the Officer also finds that the Tenant most likely believed that because she had permission from the former landlord to allow her grandson to live in the Rental Unit, and that there were no complaints of guests being at the Rental Unit, that the Tenant took this to believe she did in fact have permission.
- [37] Regarding the charge of rent, the Tenant admitted to not knowing the rules and regulations around rent. The Landlord admitted that this was a more serious issue than the subtenancy itself. The Officer finds that the evidence establishes that the Tenant did sublet without the written permission from the Landlord and did not comply with clause 30(8) of the Act.
- [38] The Officer notes that the Landlord stated that he did not warn the Tenant about the subletting and concerns about the rent being charged to the subtenants. The Landlord stated that he was gathering information before taking next steps.
- [39] However, once the Landlord obtained proof of his concerns, the Landlord immediately served the Tenant the Notice. The Landlord should have provided the Tenant a warning, and with the opportunity to correct the situation but instead issued a notice of termination.
- [40] In this case, the Tenant is a senior with health issues, and who has lived in the Rental Unit for 14-years without incident. To terminate the tenancy of this Tenant based upon the strict application of the new rental legislation would not be appropriate in these circumstances. However, if the Tenant wants to continue to sublet rooms she must do so only with the Landlord’s permission and within the confines of the Act.

ii. Must the Landlords repair the Rental Unit?

- [41] The Tenant stated that repairs are needed in the Rental Unit which are:
- 1) Two closet doors in the hallway;
 - 2) A dripping tap; and
 - 3) The patio door.
- [42] The Tenant did not submit any photographs or documentary evidence to show the state of the items in question.
- [43] The Landlord stated that he was not disputing the need for some repairs. The Landlord stated that he was not aware of the two closet doors, and if the Tenant did inform him of it, he did not remember. The Landlord stated that he was aware of the dripping tap, and has not had the opportunity to repair it yet. The Landlord stated that the patio door was fixed, but the Tenant’s small dogs continue to dent the tin piece. The Landlord stated that the functionality of the door is fine.
- [44] The Officer finds that there is insufficient evidence to determine the state of the patio door. However, the Officer finds that the undisputed evidence is that the two closet doors and the dripping tap need to be repaired. The Landlord shall repair the two closet doors and the dripping tap by July 15, 2024.

Conclusion

- [45] The Application is allowed and the Notice is dismissed.
- [46] The tenancy shall continue.
- [47] **The Tenant is reminded that she cannot sublet the Rental Unit without written consent from the Landlord. Further, the Tenant is reminded that if permission is given to sublet, the Tenant must follow the amount of rent allowed to be charged pursuant to clause 30(8) of the Act. Further complaint on this point may lead to the termination of the tenancy agreement.**
- [48] The Landlords shall repair the two closet doors in the hallway and the dripping tap by July 15, 2024.
- [49] This Order will be emailed to the parties.

IT IS THEREFORE ORDERED THAT

1. **The Application is allowed and the Notice is dismissed.**
2. **The Landlord shall repair the two closet doors in the hallway and the dripping tap by July 15, 2024.**

DATED at Charlottetown, Prince Edward Island, this 20th 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.