

Introduction

- [1] On June 25, 2024, the Owner filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Owner Application") with the Residential Tenancy Office (the "Rental Office"). The Owner Application seeks earlier termination of a tenancy agreement pursuant to the *Residential Tenancy Act* (the "Act").
- [2] The Application was accompanied by a *Form 4 (A) Eviction Notice* (the "Notice"). The Notice was dated June 20, 2024, effective June 20, 2024, and was served by the Owner to the Occupant by personally delivering it to the Occupant. It was served for the following reason:

You or someone you have allowed on the property have disturbed, endangered others or put the landlord's property at significant risk.

- [3] On June 26, 2024, the Occupant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Occupant Application") with the Rental Office. The Occupant Application seeks:

*To dispute an Eviction Notice; and
To request a determination that the Landlord contravened their right to quiet enjoyment.*

- [4] On July 2, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Owner, the Occupant, and the Owner's witness participated.

Preliminary Issue on Jurisdiction

- [5] A preliminary matter on the question of jurisdiction was identified by the Officer: Is there a tenancy agreement between the parties pursuant to the *Act*?
- [6] The parties provided written and oral submissions relating to jurisdiction. The arguments and submissions focused on whether or not there is a tenancy agreement and whether or not the Officer can grant the remedies sought in the Applications.

Summary of the Evidence

- [7] On December 24, 2023, the Occupant moved into the Unit, which is a single-family house. The parties agreed there was no written tenancy agreement and there was no agreement for the Occupant to pay rent. No security deposit was paid. The Occupant continues to live in the Unit.

Owner's Evidence and Submissions

- [8] The Owner's evidence is summarized as follows. The Unit was never a rental Unit and she had been renovating the Unit to sell it. There are no walls or ceiling in the living room, kitchen, hallway, or main bathroom and there are no cooking facilities. In December 2023, the Occupant needed a place to live and the Owner offered to allow her to temporarily live in the Unit until the Occupant was able to find another place to live. She told the Occupant as the Unit was under construction, it was not suitable to be a rental. On June 3, 2024, the Occupant sent a text to the Owner stating that she does not tell anyone that she is renting and tells people that a friend lets her stay at the Unit for free to house sit and take care of the house.
- [9] The Owner never asked the Occupant for any money for rent or for a security deposit. The Occupant wanted to pay the Owner something for being allowed to stay in the Unit and the Owner suggested she could pay the monthly electricity bill. The Occupant did not pay the electricity bill for May 2024 but the Owner has not asked for it. The Owner's insurance company cancelled her policy because the Occupant is living in the Unit and the condition of the Unit is not habitable because of the construction.

- [10] The Occupant has been causing problems at the Unit. She has been blocking the Owner's realtor from showing the Unit by stating the Occupant is having mental health problems and doesn't want the realtor there. She tried to install internet without the Owner's consent. She has blocked the Owner from using the bathroom at the Unit. The Owner has tripped over the Occupant's cat's litter box as it is often in the hallway. The Occupant broke the shower head at the Unit and she has left the door to the Unit unlocked making the Unit unsecure.
- [11] The Owner's witness stated he is the Owner's realtor. He stated that he had tried to work with the Occupant to be able to have showings at the Unit but the Occupant did not want him there. The Occupant told him that she was having some mental health problems and she needed some time to herself.

Occupant's Evidence and Submissions

- [12] The Occupant's evidence is summarized as follows. The Occupant moved into the Unit on December 24, 2023, as she needed a place to live and the shelters would not take her with a cat. She agreed to pay the electricity bill to help out with some costs but there is no written tenancy agreement. On June 19, 2024, the Owner got mad at her and ever since then the Owner has been harassing the Occupant and trying to kick her out of the Unit. Before that time there had been no issues between the parties.
- [13] The Owner's actions and the actions of the realtor have been hard on the Occupant's mental health and she needs time to recover to be able to find another place to live and a job. The Owner broke a door in the Unit and the Occupant had to call police as a result. The Owner comes and goes from the Unit without the Occupant's permission and she wants at least 60-days to recover mentally without being bothered to give her time to find another place to live.

Analysis

Preliminary Issue: Is there a tenancy agreement between the parties pursuant to the Act?

- [14] The following definitions are included in Section 1 of the Act.

(n) "**rent**" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include

- (i) a security deposit, or
- (ii) a fee prescribed under clause 107(1)(j);

(o) "**rental unit**" means living accommodation rented or intended to be rented to a tenant and, with respect to a person who rents or intends to rent a mobile home site for the person's mobile home, includes the mobile home site;

(v) "**tenancy**" means a tenant's right to possession of a rental unit under a tenancy agreement;

(w) "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and the provision of services and facilities.

Subsection 2.(1) states:

Subject to section 4, this Act applies to tenancies of rental units.

- [15] The Officer only has jurisdiction to adjudicate matters which are authorized by the *Act*. The Officer's jurisdiction is based upon a landlord-tenant relationship between the parties, pursuant to a tenancy agreement.
- [16] The parties agreed the Owner provided the Occupant with a place to live to assist the Occupant until she found another place to live. Both parties testified that there was no written tenancy agreement and there was no requirement for the Occupant to pay rent or perform any work or services to live in the Unit. A text from the Occupant stated that she does not tell anyone she is renting and states that a friend lets her stay at the Unit for free.
- [17] The parties agreed that the Occupant did pay the electricity bill each month, however there was no evidence that the payment of this bill was a requirement for the Occupant to live in the Unit. The Owner stated that the bill for May has not been paid and she has not asked the Occupant to pay the bill.
- [18] Although the Occupant may have provided some financial help to the Owner for allowing her to live at the Unit, the Officer finds that the evidence does not establish that the electricity payments would be considered "*rent*" or that the payments mean the parties had entered into a tenancy agreement, either express or implied. The electricity payments were not a condition of the Occupant living in the Unit.
- [19] A "*tenancy*" is defined in the *Act* to mean "*a tenant's right to possession of a rental unit under a tenancy agreement*". If there is no tenancy agreement, then it follows that there is no "*tenancy*" for the purposes of the *Act*. The *Act* applies only to tenancies of rental units and this is stated in clause 2(1) of the *Act*. If there is no tenancy or tenancy agreement, then the *Act* does not apply.
- [20] The Officer finds that there is no tenancy agreement between the parties and that the relationship between the parties is not a landlord-tenant relationship governed by the *Act*. Therefore, the Officer does not have the jurisdiction to adjudicate the matter between the parties or make a determination regarding the Owner Application, Occupant Application, or the Notice.

Conclusion

- [21] There is no tenancy agreement between the parties or landlord-tenant relationship within the jurisdiction of the *Act* and the Officer does not have the jurisdiction to adjudicate the matters in dispute.
- [22] The Owner Application and the Occupant Application are dismissed.

IT IS THEREFORE ORDERED THAT

- A. There is no tenancy agreement between the parties or landlord-tenant relationship within the jurisdiction of the *Act*, and the Officer does not have the jurisdiction to adjudicate the matters in dispute.
- B. The Owner Application and the Occupant Application are dismissed.

DATED at Charlottetown, Prince Edward Island, this 4th day of July, 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 **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.