

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 19, 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.
- [3] On June 22, 2024 the Tenant emailed the Application to the Landlord.
- [4] The Application was supported by a *Form 4 (A) Eviction Notice* (the “Notice”).
- [5] On June 9, 2024 the Landlord personally delivered the Notice to the Tenant.
- [6] The Notice dated June 9, 2024 effective June 29, 2024 was served to the Tenant for the following reasons:
1. *You are repeatedly late in paying rent;*
 2. *You or someone you have allowed on the property have disturbed, endangered others or put the landlord’s property at significant risk;*
 3. *You or someone you have allowed on the property have engaged in illegal activity on the property; and*
 4. *You or someone you have allowed on the property has caused damage to the rental unit.*

The particulars of termination:

I have had multiple complaints and incidents where the Charlottetown Police had to be involved. I have documentation of incidents and formal complaints from other tenants.

- [7] On June 24, 2024 the Rental Office mailed and emailed the parties notice of a hearing via teleconference, along with a copy of the Application.
- [8] On July 5, 2024 the Rental Office emailed the parties an evidence package which only included the Tenant’s documents submitted into evidence.
- [9] On July 8, 2024 the Landlord requested an adjournment and an extension on the deadline to submit evidence. The adjournment and the extension was approved by the Residential Tenancy Officer (the “Officer”). The Rental Office emailed the parties a new notice of hearing via teleconference.
- [10] On July 16, 2024 the Rental Office emailed the parties the new evidence package (“EP”), which included 25-pages of evidence submitted by the Tenant and the Landlord, and one video submitted by the Landlord.
- [11] On July 17, 2024 the Landlord requested that two additional documents be submitted into evidence. The Officer permitted the additional documents into evidence. The Rental Office emailed the additional documents to the Tenant.
- [12] On July 23, 2024 at 1:00 p.m. a teleconference hearing was held before the Officer. The Landlord and the Tenant participated at the hearing. The Tenant was provided a room and a phone at the Rental Office to fully participate in the hearing. The Tenant was also provided a hard-copy of the EP, along with a hard-copy of the additional evidence submitted by the Landlord.

ISSUE

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

SUMMARY OF EVIDENCE

- [13] The Rental Unit is an apartment situated in a six-unit apartment building (the "Residential Property").
- [14] The Landlord and the Tenant had a written, fixed-term tenancy agreement from the period of January 21, 2023 to January 31, 2024. The tenancy continued on a month-to-month basis. Rent is \$1,250.00 due on the first day of the month. A \$1,000.00 security deposit was paid in January 2023.

LANDLORD'S EVIDENCE AND SUBMISSIONS

- [15] The Landlord submitted 10-pages of documents into evidence including: text messages and photographs of the Residential Property's entrance door. The Landlord also submitted a 0:25 video into evidence. The Landlord was permitted to submit additional evidence which included: two written submissions by two other tenants in the Residential Property.

Late Rent

- [16] The Landlord stated that the Tenant pays rent via e-transfer. The Tenant was late paying the rent for May 2024 and April 2024. The Tenant may have been late paying rent in March 2024, but the Landlord was uncertain. The Landlord stated that the Tenant paid rent for June 2024 on time, and paid rent for July 2024 early. The Landlord stated that he did not serve any eviction notices for the late payments of rent.

Noise and Quiet Enjoyment

- [17] The Landlord stated that he has received numerous complaints from other tenants in the Residential Property regarding loud noises late at night coming from the Rental Unit. The Landlord stated that he received text messages from other tenants about hearing construction noises, yelling, and someone playing drums in the Rental Unit (pp. 15-16 EP).
- [18] The Landlord stated that the complaints also included a lot of foot-traffic and unknown people loitering around the Residential Property. The Landlord stated these unknown people are guests of the Tenant. The Landlord stated that some of the noise complaints are from July 2023 (p. 18 EP). The Landlord stated that the behavioural and noise issues have been consistent and that he has warned the Tenant on numerous occasions.
- [19] The Landlord stated that garbage is found in the Residential Property's hallway.
- [20] The Landlord submitted two letters as additional evidence. The Landlord stated that these two letters are from two tenants in the Residential Property. The letters describe some of the complaints and the negative experiences these tenants have had with the Tenant and the Tenant's guests.

Illegal Activity

- [21] The Landlord stated that he did not witness the illegal activity, but was informed by other tenants that the Tenant was selling vapes in the Rental Unit. The Landlord stated that the police have been called to the Residential Property because of the Tenant's guests. The Landlord stated that another tenant in the Residential Property accused the Tenant of riding their bicycle without permission.
- [22] The Landlord stated that he witnessed the Tenant on a bicycle through a video camera recording. The Landlord stated that he did not submit that recording into evidence.

Damage

- [23] The Landlord stated the entrance door to the Residential Property was damaged. There were screws in the deadbolt and the door was kicked in. The Landlord stated that the deadbolt was replaced and he believed it was one of the Tenant's guests. The Landlord stated that the video camera was not installed at the time the damage happened. The Landlord submitted photographs of the damaged door (pp. 21-25 EP).

TENANT'S EVIDENCE AND SUBMISSIONS

- [24] The Tenant submitted 5-pages of documents into evidence including: a copy of the Application and the tenancy agreement.

Late Rent

- [25] The Tenant admitted to being late with rent in April and May 2024 due to some financial struggles with his work and employment insurance. The Tenant stated that he paid rent early for July 2024 and has rent for August 2024 ready. The Tenant denied the Landlord's characterization of being late repeatedly.

Noise and Quiet Enjoyment

- [26] The Tenant admitted that he allowed some people into his life, which he otherwise should not have. The Tenant stated that he has removed those people from his life and that he rarely has guests to the Rental Unit. The Tenant stated that he does not use his drum set any longer. The Tenant denied that he does construction late at night or makes loud noises.
- [27] The Tenant stated that the foot-traffic and unwanted guests were because of his former girlfriend. The Tenant stated that he has since removed her from the Rental Unit and is no longer in a relationship with her. The Tenant stated that people will often sleep in the Residential Property's hallways, and leave garbage. The Tenant stated that he is not responsible for that, and they are not his guests. The Tenant admitted that some of his ex-girlfriend's items were left in the hallway, but they were removed after four days.
- [28] The Tenant stated that he has corrected the noise and behavioural issues alleged by the Landlord. The Tenant stated that he tries to keep the noise levels down, and if he has any guests over, it is only one or two at a time.

Illegal Activity

- [29] The Tenant denied any illegal activity happening at the Residential Property. The Tenant did not recall the police removing anyone from the Residential Property. The Tenant stated that he sold a couple used vapes, but did not know that was an illegal activity. The Tenant stated that he does not sell such items any longer. The Tenant stated that some of his former guests used the Rental Unit's address as their own primary residence. The Tenant stated that he did not give those people permission to do that and that may be why the police arrived to the Residential Property.
- [30] The Tenant stated that he did not use another tenant's bicycle. The Tenant stated that he purchased his own bicycle and placed it in the Residential Property's basement. The Tenant stated that the video was not submitted into evidence.

Damage

- [31] The Tenant denied damaging the door and did not believe any guest of his damaged the door. The Tenant stated that he does not know who may have damaged the door, but that he is not responsible in any way for the damage.

ANALYSIS

[32] The Tenant filed the Application in accordance to clause 61(5), pursuant to clause 75 of the Act, disputing the Notice. The Landlord's reasons for terminating the tenancy is pursuant to clauses 61(1)(b), (d), (e) and (f) 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:*
- (b) *the tenant is repeatedly late in paying rent;*
 - (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;*
 - (e) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*
 - (i) *has caused or is likely to cause damage to the landlord's property,*
 - (ii) *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*
 - (iii) *has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant; and*
 - (f) *the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property.*

[33] The Landlord bears the onus of proving his claims 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 claims against the Tenant.

[34] For the reasons below, the Officer finds that the Landlord has not provided sufficient evidence to prove his claims. The Notice is dismissed, the Application is allowed, and the tenancy shall continue.

Late Rent

[35] The Landlord stated that the Tenant was late paying rent for April and May 2024. The Tenant did not dispute this fact, but provided the reason for the lateness. The Landlord was not certain about March 2024's payment. The Landlord did not submit any e-transfers into evidence to show when the Tenant paid rent each month. The Tenant paid rent for June 2024 on time, and paid rent for July 2024 early.

[36] The Officer finds that the Landlord has not provided sufficient evidence to prove that the Tenant has been repeatedly late with paying the rent. This claim is dismissed.

Noise and Quiet Enjoyment

[37] The Landlord provided very limited direct evidence regarding the Tenant and the Tenant's guests' behaviour and noise complaints. The Landlord submitted copies of the text messages from the complaining tenants, along with two written submissions from these other tenants. However, the written submissions were not affirmed under oath, and, as a result, have minimum evidentiary weight.

- [38] In light of the Tenant's submissions denying much of the Landlord's evidence, it would have been helpful if the Landlord had the other tenants participate in the hearing as witnesses. As witnesses, the other tenants would have been affirmed under oath, and have had the opportunity to provide their direct testimony and evidence. This would have carried substantially greater weight as the affirmed and direct testimony would have been tested under the scrutiny of chief examination and cross examination.
- [39] Despite the Landlord's strategy for the hearing, the Tenant has admitted to some issues he has had with his guests in the past. The Tenant stated that these specific guests are no longer in his life, and will not return to the Rental Unit. The Tenant stated that he has taken steps to reduce any noise and minimize the number of guests he may have over from time to time.
- [40] The Officer finds that there is insufficient evidence to conclude that the Tenant or the Tenant's guests' actions have significantly interfered with or unreasonably disturbed other tenants in the Residential Property, which would have reached a level that justify terminating the tenancy agreement. This claim is dismissed.

Illegal Activity

- [41] Similar to the above reasons, the Officer finds that the Landlord provided no direct evidence regarding the Tenant or the Tenant's guests engaging in illegal activity. The Landlord only provided hearsay evidence at the hearing. Again, the Landlord could have had the complaining parties participate at the hearing as witnesses, to provide their direct testimony under oath, which could have been tested under the scrutiny of chief examination and cross examination.
- [42] The Officer notes that the Landlord stated that he attempted to get police reports to have as evidence for the hearing. However, the Landlord did not submit any such police reports into evidence and are not part of the evidentiary record. This claim is dismissed.

Damage

- [43] The Landlord stated that one of the Tenant's guests damaged the front door entrance to the Residential Property. However, the Landlord did not witness this action and did not have any recordings from the camera to substantiate his allegation. The Tenant denied the allegations.
- [44] The Officer finds that the Landlord provided photographs to show that the door has been damaged. However, the Landlord has not provided sufficient evidence to attribute that said damage to the Tenant and/or one of the Tenant's guests. Therefore, this claim is dismissed.

CONCLUSION

- [45] The Notice is dismissed. The Application is allowed.
- [46] The tenancy shall continue in full force and effect.
- [47] **The Officer reminds the Tenant that the Landlord has shown zero tolerance for lateness of rent, noise complaints, foot-traffic late into the night, problematic guests and any other general behaviour that would otherwise disrupt other tenants in the Residential Property. Further complaint(s) may result in another eviction notice and termination of the tenancy.**

IT IS THEREFORE ORDERED THAT

- I. **The Application is allowed, and the Notice is dismissed.**
- II. **The tenancy shall continue in full force and effect.**

DATED at Charlottetown, Prince Edward Island, this 29th day of July, 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 (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.