

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 27, 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(B)) dated June 20, 2024, effective October 30, 2024, (the “Notice”). The Notice was served to the Tenant on June 24, 2024, for the following reason:
- I want possession of the rental unit for myself.*
- [3] On June 27, 2024, the Application was served to the Landlords by email.
- [4] On July 24, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlords (“LL1” and “LL2”) and the Tenant participated in the hearing.
- [5] The parties had a previous hearing regarding a dispute over an eviction notice for failing to pay rent and failing to pay the security deposit. The Officer found that the notice was not valid and the tenancy agreement continued (LD24-111).
- [6] The parties had a previous hearing regarding a dispute over an eviction notice for permitting an unreasonable number of occupants in the Rental Unit, for failing to comply with a material term of the tenancy agreement, and for subletting without the Landlords’ consent. The Officer found that the notice was not valid and the tenancy agreement continued (LD24-156).

PRELIMINARY MATTER

- [7] The Notice was dated June 20, 2024, for effect October 30, 2024. As the Notice is required to be effective not earlier than four months after the Notice is served and be the day before rent is due, the effective date of the Notice is automatically changed to October 31, 2024, pursuant to clause 54 of the Act.

ISSUE

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

SUMMARY OF THE EVIDENCE

- [8] In August 2023, the parties entered into a written month-to-month tenancy agreement for the Rental Unit, which is a room rental with shared common spaces in a house (the “Residential Property”). The Tenant is the only occupant in the Residential Property. Rent is \$700.00 due on the 1st day of the month. A security deposit of \$700.00 was paid.

Landlords’ Evidence and Submissions

- [9] LL1’s evidence is summarized as follows. LL1 lived with the Tenant at the Residential Property until December 2023 but had to move out because the parties’ pets were not getting along. LL1 has recently been squatting in a non-residential location and his living conditions are causing stress on his cat which has to be treated by a veterinarian. LL1 requires possession of the Residential Property so he has somewhere to live and to improve the health of his cat. The Landlords are not planning on re-renting or selling the Residential Property for at least one year.

- [10] LL2's evidence is summarized as follows. The Landlords are approximately \$3,000.00 in debt and they are having a hard time paying the property's expenses. If any further mortgage payments are missed the bank may foreclose on the property. LL2 is not able to afford to continue paying the expenses at the Residential Property and to continue to pay rent. LL2 wishes to move into the Residential Property to save money on rent and to be able to afford the property's expenses.
- [11] The Landlords cannot sell the Residential Property in its current condition. The property needs repairs and the Landlords cannot afford to repair the property at this time. The Landlords are aware that the Tenant is entitled to compensation if he is evicted and that the Landlords could be liable for a bad faith eviction if they re-rent or sell before one year.

Tenant's Evidence and Submissions

- [12] The Tenant's evidence is summarized as follows. The Tenant did not dispute the Landlords' reasons for seeking possession of the Residential Property. The Landlords failed to maintain the Residential Property and it is not the Tenant's fault it is in poor condition. The Landlords could rent out other rooms in the Residential Property if they need more money. It will be costly for the Tenant to move and he will have to pay higher rent if he is required to move.

Director's Evidence

- [13] The Director submitted into evidence the two previous Rental Office Orders between the parties: LD24-111 and LD24-156.

ANALYSIS

- [14] The relevant law is as follows:

62. Landlord's notice for landlord's use of property

1. *A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by*

(a) the landlord.

- [15] In Order LR19-09, under the previous *Rental of Residential Property Act* (the "Former Act") the Island Regulatory and Appeals Commission (the "Commission") determined an appeal regarding a landlord seeking to end a tenancy agreement for occupation of the rental unit by the landlord. In this decision, the Commission adopted as a part of the reasoning an Ontario decision, *Fava v. Harrison*, 2014 ONSC 3352, due to similar wording in the Former Act and Ontario's residential tenancy legislation. The following was stated at paragraph [17] of the *Fava* decision:

"We accept, as reflected in Salter, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property."

- [16] In Order LR21-52 the Commission found that a termination notice served for occupation of a rental unit by the landlord's son was valid, stating as follows:

"The Commission does not agree that [the landlord] did not meet his onus. His uncontroverted evidence before the Director was that [the landlord] served the notice so that his son could have a place to live upon his return from British Columbia. [The tenant] challenged the notice based on her personal circumstances and the disruption that her

eviction would cause, and not because of any allegation of bad faith or dishonesty on the part of [the landlord]. In the result, the Director disregarded the totality of [the landlord's] evidence relating to his son's intended occupation of the premises, without reasons.

This is not to suggest that in similar such cases additional evidence that supports a landlord's application under clause 15(1)(a) is not beneficial or helpful. In some cases, it may in fact be necessary to support a claim that a landlord is acting in good faith. In this case, however, the Commission finds that there was nothing in the evidence before the Director to warrant dismissing [the landlord's] evidence outright.

In any event, on appeal the Commission received into evidence an e-mail from [the landlord's] son, confirming he was moving back to Prince Edward Island and that he needed an apartment. Though not necessary given the Commission's findings in this matter, the Commission takes notice that the e-mail received confirms the testimony of [the landlord] that his son is moving home and needs a place to live."

- [17] In Order LR21-50, the Commission determined an appeal regarding a landlord seeking to end a tenancy agreement for occupation of a rental unit by the landlord's son. The Commission in this decision stated:

"As held by this Commission in Order LR19-09, a strained relationship between a landlord and tenant does not preclude a successful application under clause 15(1)(a) of the Act: [T]here is much evidence on the record, both in documents filed and in oral testimony, as to recent past difficulties between the parties. The evidence suggests that the relationship between the parties became strained in 2018 and remains so today.

While these difficulties may provide an alternate motive for terminating the tenancy, Order LR93-9 demonstrates that such motive may also co-exist with a lessor seeking, in good faith, possession of the premises in order to personally occupy the premises.

...The Commission confirms that in conducting a good faith analysis, it is appropriate to consider a landlord's conduct and motives in determining whether there is a genuine intention to occupy the Premises..."

- [18] Effectively, the Officer's role in applications of this type is to ascertain, as best as possible, the Landlords' intention at the time the Notice was served. The Officer may be assisted by a consideration of the totality of the evidence. The Officer must carefully weigh the evidence of both parties to determine on a balance of probabilities whether, when the Notice was served to the Tenant, the Landlords had a genuine intention to move into the Residential Property and occupy it as their residence. The Officer must also determine if the Landlords' conduct and motivations were in good faith.
- [19] LL1 testified that he is squatting and requires possession of the Residential Property so he has somewhere permanent to live. LL2 testified the Landlords are in debt and LL2 cannot afford to continue paying the expenses at the Residential Property and continue paying rent. The Landlords stated they will not re-rent or sell the Residential Property for at least one year if they are given possession of the property.
- [20] The Tenant did not dispute the Landlords' reasons for wanting possession of the Residential Property. The Tenant stated the Landlords could rent out the rest of the Residential Property to make money and that it will be costly if he has to move.

- [21] At the beginning of the tenancy, the evidence establishes that the Landlords and the Tenant were friends but over time the landlord / tenant relationship between the parties has become strained. The Landlords have unsuccessfully attempted to evict the Tenant from the Rental Unit on two separate occasions for different reasons. However, as noted in Order LR21-50, "*a strained relationship between a landlord and tenant does not preclude a successful application*" to terminate a tenancy for a landlord's own use of a rental unit.
- [22] The Officer has reviewed the evidence, the testimony of the parties, and the legislative requirements set out in clause 62 of the Act. The Officer finds that the Landlords have established a genuine intent to occupy the Residential Property. Further, the Officer finds that the Landlords have provided sufficient evidence for the Officer to determine the Landlords served the Notice to the Tenant in good faith. Therefore, the Officer finds that the Notice is valid and the Application is denied.

CONCLUSION

- [23] The Notice is valid and the Application is denied.
- [24] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on October 31, 2024. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- [25] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- I. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on October 31, 2024. The Tenant and all occupants must vacate the Residential Property by this time and date.
- II. 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 1st day of August, 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.