

## INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On July 4, 2024 the Tenant’s representative (“L.J.”) 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 was emailed to the Landlord.
- [3] The Application was supported by a *Form 4 (A) Eviction Notice* (the “Notice”). The Notice was emailed to the Tenant and a copy was posted to the front door of the Rental Unit.
- [4] The Notice was dated June 27, 2024 and effective on July 27, 2024. The Officer notes that the effective date is automatically corrected to July 31, 2024, pursuant to section 54 of the Act. The Landlord served the Notice to the Tenant for the following reasons:
1. *You or someone you have allowed on the property have disturbed, endangered others or put the landlord’s property at significant risk;*
  2. *You or someone you have allowed on the property have engaged in illegal activity on the property; and*
  3. *You have failed to comply with a material term of the tenancy agreement despite written warning.*

*The particulars of termination state:*

*“Smoking in a non-smoking building, urinating in our parking lot, being under the influence of alcohol in your car in our parking lot and receiving a DUI because of it (police on site on several occasions), fighting over a bottle of liquor in our lobby (police report filed). We have received many complaints from other tenants.”*

- [5] On July 9, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing, along with a copy of the Application. Due to an error on the notice of hearing, a second notice of hearing was sent to the parties with the correct date for the evidence deadline. A third notice of hearing was sent to the parties with a new date and time for the teleconference hearing.
- [6] On July 23, 2024 the Rental Office emailed the parties the evidence package (the “EP”).
- [7] On July 30, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). Two representatives for the Landlord (the “Representatives”), L.J., and two witnesses for the Tenant (the “Subtenant” and “A.M.”) participated in the hearing.

## ISSUE

- i. Must the Tenant, Subtenant and all occupants vacate the Rental Unit due to the Notice served to the Tenant?

## SUMMARY OF EVIDENCE

- [8] The Rental Unit is an apartment situated in a 21-unit apartment building (the “Residential Property”).
- [9] On January 1, 2021, the Tenant and the Landlord entered into a tenancy agreement. The Tenant and the Subtenant then entered into a written, month-to-month tenancy agreement for the Rental Unit. Rent is \$455.00 due on the first day of the month. No security deposit was required.

- [10] The Subtenant is the sole occupant of the Rental Unit. L.J. filed the Application on behalf of the Tenant, and at the request of the Subtenant. The Subtenant is disputing the reasons set out in the Notice.

#### **LANDLORD'S EVIDENCE AND SUBMISSIONS**

- [11] The Landlord submitted 14-pages of documents into evidence including: redacted written complaints, written submissions from other tenants in the Residential Property, photographs from video surveillance in the Residential Property, electronic messages, photographs and screenshots.
- [12] The Representatives stated that there have been on-going issues with the Subtenant. The Representatives stated they have received numerous complaints from other tenants in the Residential Property. Some of the complaints were submitted into evidence. One of the Representatives also lives in the Residential Property.
- [13] The Representatives stated that the Subtenant is smoking in the Rental Unit. The Representatives stated that the Subtenant has received numerous oral warnings, and one written warning at the beginning of the tenancy when the Subtenant was smoking on the Rental Unit's balcony. The Representatives stated that in April 2024, an inspection of the Rental Unit was complete. Although there was no evidence of smoking in the Rental Unit, the Representatives noticed a strong smell of smoke emitted from the Rental Unit.
- [14] The Representatives stated that they have witnessed and have received numerous complaints about the Subtenant being intoxicated at the Residential Property. The Representatives stated that they have witnessed and have received numerous complaints that the Subtenant has urinated in the Residential Property's parking lot and surrounding area. The Representatives stated that one of the other tenants sent a complaint and a photograph of the Subtenant urinating beside his vehicle parked in the Residential Property's parking lot. The Representatives stated that a lot of children live in the Residential Property and it is not appropriate for the Subtenant to urinate in public areas.
- [15] The Representatives stated that the police have been to the Residential Property on numerous occasions. On one occasion the Subtenant was charged with driving while under the influence. The Representatives stated that law enforcement called them and informed them of the charges laid against the Subtenant.
- [16] The Representatives stated that on May 31, 2024 the Subtenant got into a physical altercation with another tenant in the Residential Property. The Representatives submitted screenshots of the video recording showing snapshots of the altercation. The Representatives stated that they identified one of the individuals in the snapshot as the Subtenant.
- [17] The Representative stated that the issues on the Notice have been on-going and that they know about the Subtenant's personal hardships, and because of this, tried to be understanding with the Subtenant. However, there have been no improvements from the Subtenant.

#### **TENANT'S EVIDENCE AND SUBMISSIONS**

- [18] The Tenant submitted 7-pages of documents into evidence including: a copy of the tenancy agreement and a copy of an eviction notice that the Tenant gave to the Subtenant.
- [19] L.J. did not provide submissions as it relates to the Application or the Notice. L.J. confirmed that the Tenant has alternate living accommodations available for the Subtenant pending this decision. L.J. permitted the Subtenant to provide testimony at the hearing.

- [20] The Subtenant stated that he does not smoke in the Rental Unit. The Subtenant stated that other tenants in the Residential Property smoke in the Residential Property. The Subtenant stated that he did receive one written warning at the beginning of the tenancy, but has not smoked on the balcony since the warning. The Subtenant stated that he only uses his vape outside.
- [21] The Subtenant stated that there was a loss in his family, and he turned to drinking alcohol. The Subtenant stated that this was not a good decision, and he is currently in detox. A.M. provided testimony detailing the Subtenant's current progress and her role.
- [22] The Subtenant stated that with regard to the driving under the influence claim, he was not driving his truck. He was sitting in his truck with alcohol, parked in the Residential Property's parking lot when the police arrived. The Subtenant stated that he has some medical conditions which cause him to be unable to hold his bladder. The Subtenant stated that this is why he sometimes needed to urinate outside the Residential Property.
- [23] The Subtenant stated that the physical altercation was because another tenant entered the Rental Unit and took a liquor bottle from him. The Subtenant stated that he followed the other tenant and this is where the altercation happened. The Subtenant stated that he was never questioned by the police.
- [24] The Subtenant apologized for his conduct and actions over the past while but stated that he is trying to make better choices and improvements in his life.

## ANALYSIS

- [25] 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)(d), (e) and (h) of the Act, which states:

### **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:*
- (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*
  - (h) *the tenant*
    - (i) *has failed to comply with a material term of the tenancy agreement, and*
    - (ii) *has not corrected the situation within a reasonable time after the landlord has given written notice to do so.*

- [26] The Landlord bears the onus of proving its 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.
- [27] For the reasons below, the Officer finds that the Landlord has provided sufficient evidence to establish valid cause for terminating the tenancy. The Notice is valid, the Application is denied and the tenancy shall end in the timeline below.
- [28] The Officer finds that the Subtenant has significantly interfered with and unreasonably disturbed other tenants in the Residential Property. Further, the Subtenant's actions have seriously jeopardized the safety of the other tenants in the Residential Property.
- [29] One of the Representatives lives in the Residential Property and provided direct evidence that she witnessed the Subtenant's public intoxication and urinating outside. The Landlord submitted into evidence some anonymous written complaints, which the Officer notes, holds little evidentiary weight. However, the Landlord did submit some signed written submissions by other tenants in the Residential Property. Although these submissions carry more evidentiary weight than the anonymous submissions, the best evidence is direct oral testimony from the complaining tenants, which can be tested under the scrutiny of examination and cross-examination.
- [30] The Officer finds that the Representative's direct evidence, the photographic evidence and the Subtenant's admission of the public intoxication, public urination and the physical altercation provide sufficient evidence to establish valid ground for termination of the tenancy.
- [31] With regard to the smoking allegations in the Rental Unit, which is a breach of a material term of the tenancy agreement, the Officer finds that the Landlords have not proven their allegation. This reason for the eviction is denied.
- [32] However, the Officer finds that based on the totality of the evidence mentioned above, the Landlord has established valid grounds for terminating the tenancy agreement pursuant to clauses 61(1(d) and (e) of the Act.

## CONCLUSION

- [33] The Notice is valid and the Application is denied.
- [34] The tenancy agreement between the Landlord and the Tenant, and all subsequent agreements shall terminate effective 5:00 p.m. on August 8, 2024. The Subtenant and all occupants must vacate the Rental Unit by this time and date.

## IT IS THEREFORE ORDERED THAT

- I. **The tenancy agreement and all subsequent agreements shall terminate effective 5:00 p.m. on August 8, 2024. The Tenant, Subtenant and all occupants must vacate the Rental Unit by this time and date.**
- II. **A certified copy of this Order may be filed with 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.

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(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 **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.