

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 24, 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 request a determination that the Landlord failed to repair or maintain the rental unit and to dispute an *Eviction Notice* (Form 4(B)) dated May 30, 2024, effective October 1, 2024, (the “Notice”). The Notice was served to the Tenant for the following reason:

I want possession of the rental unit for my spouse.

- [3] On June 24, 2024, the Tenant served the Application to the Landlord by email.
- [4] On July 30, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant, the Landlord, and the Landlord’s translator participated in the hearing.

ISSUES

- i. Did the Landlord fail to repair or maintain the Rental Unit?
- ii. Does the Tenant have to vacate the Rental Unit due to the Notice?

SUMMARY OF THE EVIDENCE

- [5] In 2013 or 2014, the Tenant and a previous landlord entered into a one-year fixed term tenancy agreement for the Rental Unit, which is half of a duplex (the “Duplex”). The tenancy agreement then converted to a month-to-month agreement. The Landlord purchased the duplex in 2017 and the tenancy agreement continued. Rent is \$1,066.05 due on the 1st day of the month. A security deposit of \$500.00 was paid.

Landlord’s submissions and evidence

- [6] The Landlord’s evidence is summarized as follows. The Landlord and his spouse are currently living in another province. The Landlord and his family had lived in PEI for five years and worked in PEI for about two years. The Landlord’s spouse has received a job offer from a company she previously worked for in PEI and she will be required to move back to PEI. The job is scheduled to begin on October 15, 2024. Currently the Landlord’s spouse is not employed. A copy of the Landlord’s spouse’s previous T4’s and a copy of the job offer, dated May 7, 2024, were submitted into evidence.
- [7] The Landlord’s mortgage at his current residence is high and he is planning on selling his current residence and moving into the Rental Unit with his spouse. There is no mortgage on the Rental Unit so it will be better for the Landlord financially. The Rental Unit is smaller than his current residence and it will be easier to maintain. The Landlord’s spouse will be moving into the Rental Unit first and the Landlord will go back and forth between the Rental Unit and his current residence until he sells his residence and finishes up with his current job. A copy of the Landlord’s mortgage payment was submitted into evidence.
- [8] The Landlord did own both sides of the Duplex and he had the entire Duplex for sale at one time. Once the Landlord realized he could sell each side separately, the Landlord put both units up for sale. The other side of the Duplex was sold in January 2024. The Landlord decided not to sell the Rental Unit as he wanted a unit to move into after he retired.

- [9] The Landlord acknowledged that he owns another residence in PEI and that residence is a rental property. This other residence is bigger than the Rental Unit and the Landlord and his spouse do not need that much space. The Rental Unit is also a better location than the other rental property. The Landlord is also planning on selling this other rental property.
- [10] The Landlord acknowledged that the bills for the Rental Unit were being mailed to a property that he previously owned in PEI. That property was sold in 2021 and the new owner assisted the Landlord by forwarding the bills to the Landlord. The bills are now sent to the Landlord by email. The Landlord stated he would provide evidence of the sale of the property after the hearing.
- [11] The Landlord agreed that he had a conversation with the Tenant in 2023 about possibly renovating and selling the Unit. At that time the other side of the Duplex had not yet sold. The Landlord is no longer planning on selling the Rental Unit at this time and he understands he cannot re-rent or sell the Rental Unit for at least one year if the Tenant is evicted.
- [12] With regards to the Tenants claim for repairs, the oil tank was close to expiring and the oil company would not refill the tank. It took some time before the Landlord could get a company to come and replace the old tank. The Landlord filled the tank with oil once it was replaced. The Landlords submits that any delays in getting the tank replaced were outside of the Landlord's control.

Tenant's submissions and evidence

- [13] The Tenant's evidence is summarized as follows. The Rental Unit was put up for sale twice but it was not sold. The Landlord spoke to the Tenant about working together to have the Tenant move out so the Landlord could renovate and sell the Rental Unit. The Landlord told the Tenant that it would take too long to apply to the Rental Office to get permission to evict the Tenant for renovations. It was shortly after this conversation that the Tenant received the Notice. The Tenant believes the Landlord only wants to evict her to renovate and sell the Rental Unit.
- [14] The Landlord had originally refused to replace the oil tank when it was expiring. The Tenant agreed the oil tank had been replaced but she was without oil and hot water for 19 days while waiting for the tank to be replaced.

Post hearing evidence and submissions

- [15] After the hearing the Landlord sent the Rental Office a Statement of Adjustments which states the Landlord's previous PEI property was sold in October 2021.
- [16] A copy of the Statement of Adjustments was provided to the Tenant. The Tenant submitted that she found it strange that the Landlord's mail was still going to his previous address after so much time had passed.

ANALYSIS

Issue i. Did the Landlord fail to repair or maintain the Rental Unit?

- [17] At the time the Tenant filed the Application, the oil tank had not been replaced. During the hearing the parties agreed the oil tank had been replaced since the Application was filed. The Tenant stated she was without oil for 19 days. The Landlord stated that any delays were outside of the Landlord's control as he was waiting for a company to replace the tank.
- [18] The Officer finds that the Landlord contacted a company to replace the oil tank when he became aware it was expiring and the oil company would not refill it. Although there was a delay and the Tenant was without oil for 19 days, the Officer accepts the Landlord's evidence that the delay was outside of the Landlord's control. The Officer finds that the Tenant has not provided sufficient evidence to establish that the Landlord failed to repair or maintain the Rental Unit.

Issue ii. Does the Tenant have to vacate the Rental Unit due to the Notice?

[19] 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*

(b) the landlord's spouse.

[20] 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 a rental unit by the landlord. In this decision, the Commission adopted part of the reasoning of 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."

[21] The issue for the Officer to determine is whether there is a *genuine intent* for the Landlord's spouse to occupy the Rental Unit in order to establish *good faith*. The Officer notes that the type and amount of evidence required to support a termination notice depends on the particular facts of each case.

Renovations

[22] The parties agreed that they had a conversation about the Tenant vacating so the Landlord could renovate and sell the Rental Unit. The Tenant testified the Landlord stated that it would take too long to apply to the Rental Office to get permission to evict the Tenant for renovations. It was shortly after this conversation that the Tenant stated she had received the Notice. The Landlord testified the conversation about the Tenant vacating occurred in 2023 and not at the time the Notice was served.

[23] The Landlord did not state "renovations" as a reason for termination in the Notice. However, the parties' conversation about the Landlord renovating and selling the Rental Unit taking too long raises concerns. The inference that the Officer draws from this discussion is that one of the Landlord's motivations for terminating the tenancy agreement is for renovations and not occupation of the Rental Unit.

Spouse's Employment

[24] The Landlord submitted into evidence an Offer of Employment letter from a PEI employer addressed to the Landlord's spouse. However, there was no evidence establishing that the Landlord's spouse had accepted the offer of employment. There was also no evidence to establish the reasons why the Landlord's spouse was choosing to move across the country for a job paying \$18.00 per hour at 35 hours per week.

- [25] The Act does not strictly require that the family member moving into the Rental Unit provide direct evidence to establish the validity of the Notice. In this case, it would have been helpful if the Landlord's spouse had participated in the hearing. The Landlord's spouse 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 examination and cross examination.
- [26] 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 Landlord has not established, on a balance of probabilities, that he served the Notice to the Tenant in good faith. The Officer is not satisfied that the Landlord's spouse has a genuine intent to move into the Rental Unit. Therefore, the Officer finds that the Notice is not valid and the Application is allowed in part.

CONCLUSION

- [27] The claim for repairs is denied.
- [28] The Notice is not valid and the Application is allowed in part.
- [29] The tenancy agreement between the parties shall continue in full force and effect.
- [30] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- I. The tenancy agreement between the parties shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 2nd 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.