

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 14, 2024 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application seeks a determination that the Landlord has arbitrarily or unreasonably withheld consent to the assignment or sublet of the Rental Unit.
- [3] On June 19, 2024 the Application was emailed to the Landlord.
- [4] On June 24, 2024 the Rental Office emailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [5] On July 2, 2024 the Rental Office emailed the parties a notice for a rescheduled teleconference hearing. On July 4, 2024 the rescheduled notice was mailed to the parties as well.
- [6] On July 15, 2024 the Rental Office emailed the parties an evidence package (“EP”).
- [7] On July 18, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). One of the Tenants (the “Tenant”) a witness for the Tenants (“S.W.”), the Landlord and the Landlord’s legal counsel participated in the hearing.

ISSUE

- i. Did the Landlord arbitrarily or unreasonably withhold consent to the assignment or sublet of the Rental Unit?

SUMMARY OF EVIDENCE

- [8] The Rental Unit is one-half of a side-by-side duplex. The Rental Unit is a three-bedroom and one-bathroom, owned by the Landlord for approximately sixteen years.
- [9] In August 2020 the parties entered into a written, month-to-month tenancy agreement. Rent is \$1,004.00 due on the first day of the month. A \$400.00 security deposit was paid on August 4, 2020.

TENANTS’ EVIDENCE AND SUBMISSIONS

- [10] The Tenants submitted 9-pages of documents into evidence including: written submissions, a copy of the tenancy agreement, emails, a warning letter, and text messages.
- [11] The Tenants’ evidence is summarized as follows. On April 9, 2024 the Tenants informed the Landlord that S.W. was living with the Tenants in the Rental Unit. The Tenants informed the Landlord that they were leaving the province and requested that S.W. take over the tenancy beginning September 1, 2024. On May 20, 2024 the Landlord met with S.W., and the Landlord could not provide an answer because the Landlord’s niece may be moving into the Rental Unit.
- [12] On June 5, 2024 the Landlord informed the Tenants that she did not want to rent to S.W. and accepted their end of tenancy effective September 1, 2024.
- [13] The Tenants submit that the Landlord has unreasonably or arbitrarily withheld consent to allow the Tenants to assign the tenancy to S.W. The Tenants stated that they have a right to assign the tenancy under subsection 30(1) of the Act.

- [14] The Tenants stated that on June 5, 2024 they received a warning notice regarding the condition of the backyard of the Rental Unit. The Tenants disputed the allegations in the warning notice, and stated that this was retaliation for their request to assign the tenancy.
- [15] The Tenant stated that they did not inform the Landlord that S.W. moved into the Rental Unit but did not think it was a big deal at the time.
- [16] S.W. stated that she moved into the Rental Unit around November 1, 2023 for a brief period. S.W. stated that she started living in the Rental Unit fulltime on January 1, 2024 and pays a third of the expenses. S.W. stated that she wants to take over the tenancy beginning September 1, 2024.
- [17] S.W. stated that she owns a dog, but disputed the Landlord's allegations that her dog caused damage to the Rental Unit. S.W. stated that she has made some cosmetic changes to the Rental Unit but they are not irreversible.

LANDLORD'S EVIDENCE AND SUBMISSIONS

- [18] The Landlord submitted 19-pages of documents into evidence including: written submissions, emails, text messages, a copy of the notice of hearing and a copy of the Application.
- [19] The Landlord submits that she has not arbitrarily or unreasonably withheld consent to a sublet or assignment of the Rental Unit.
- [20] The Landlord's evidence is summarized as follows. The Landlord did not receive notice or a request regarding S.W.'s occupation of the Rental Unit. The Tenants allowed S.W. to sublet without consent, which is a breach of the Act. The Landlord stated that S.W. owns a dog, which has caused damage to the Rental Unit. The Landlord stated that S.W. has made some alterations to the Rental Unit without her permission.
- [21] The Landlord submitted that she had reason to withhold consent for sublet or assignment of the Rental Unit. The Landlord submitted that S.W. was not a suitable tenant. S.W. was already residing and subletting in the Rental Unit without consent, breaching the Act, and has caused damage to the Rental Unit.

ANALYSIS

- [22] The Application seeks a determination that the Landlord arbitrarily or unreasonably withheld consent to the assignment or sublet of the Rental Unit pursuant to subsection 30(9) of the Act, which states:

Application to the Director – tenant

- (9) *A tenant may, within 10 days of the alleged conduct, make an application to the Director under section 75 for an order determining that the landlord has arbitrarily or unreasonably withheld consent to the assignment or sublet of a rental unit.*

- [23] Subsections 30(1), (2) and (3) of the Act state:

30. *Tenant may sublet or assign rental unit with landlord's consent*

- (1) *A tenant may, with the written consent of the landlord, sublet or assign a rental unit or part of a rental unit to another person.*

Landlord shall not unreasonably withhold consent

- (2) *A landlord shall not arbitrarily or unreasonably withhold consent to a sublet or assignment of a rental unit or part of it.*

Landlord may withhold consent

- (3) *A landlord may withhold consent if it appears to the landlord that the proposed sublet or assignment of the rental unit or part of it would result in an unreasonable number of persons occupying the rental unit or part of it.*

[24] For the reasons below, the Officer finds that the Landlord has not arbitrarily or unreasonably withheld consent to sublet or assign the Rental Unit.

[25] The Officer accepts the Landlord’s testimony detailing the reasons for denying the assignment of the Rental Unit to S.W. The Officer finds that S.W. moved into the Rental Unit and started subletting without the consent of the Landlord. The Landlord only became aware of S.W. was living in the Rental Unit on April 9, 2024; three months after S.W. moved in fulltime. The Landlord took from April 9, 2024 to June 5, 2024 to come to the conclusion that she did not wish to rent to S.W. The Landlord provided that the reasons for this decision were that S.W. already breached the Act by moving into the Rental Unit without permission, S.W. brought a dog into the Rental Unit without permission, which the Landlord believed caused damage to the Rental Unit, and that S.W. made alterations to the Rental Unit without permission.

[26] In these circumstances, the Officer finds that the Landlord did not arbitrarily or unreasonably withhold consent to assign the Rental Unit. The Tenants have not established their claim and the Application is denied.

CONCLUSION

[27] The Application is denied.

IT IS THEREFORE ORDERED THAT

- I. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 7th day of August, 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.