

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On August 5, 2024, the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) disputing an *Eviction Notice (Form 4(A))* (the “Notice”). The Notice was served by a Landlord representative (the “Representative”) to the Tenant on July 31, 2024, effective August 31, 2024, for the following reason:

You or someone you have allowed on the property have disturbed, endangered others, or put the landlord's property at significant risk; Pets.

The particulars of termination state:

“2 dogs that have been barking excessively and causing noise complaints. Also, unresponsive pet owner, dogs not on leash, lunging at tenants, when you have had ample warnings. Causing safety concern for other tenants.”

- [3] On August 20, 2024, a teleconference hearing was held with the Tenant, a Tenant witness, the Representative, and the Residential Tenancy Officer (the “Officer”).

ISSUE

- i. Must the Tenant and all occupants vacate the Rental Unit?

SUMMARY OF EVIDENCE

- [4] The Landlord and the Tenant entered into a written, one-year fixed-term tenancy agreement for the Rental Unit beginning October, 1, 2022, which has renewed annually. The Rental Unit is a motel room located in a multi-unit building (the “Residential Property”). Rent is \$1,050.00 due on the first day of the month. A security deposit of \$500.00 was paid.

Landlord's Evidence and Submissions

- [5] The Representative's evidence is summarized as follows.
- [6] The Tenant got a new dog around March 2024 and since that time the dog has been causing disturbances around the Residential Property. The Representative did not give the Tenant permission to have a dog and the tenancy agreement states that the Landlord's permission is required. There are two other dogs in the building but there have not been any complaints against the other dogs. The Representative would have allowed the Tenant to keep the dog if it had not caused so many disturbances over the past several months.
- [7] The Tenant's dog can be heard barking in the Rental Unit and other tenants have contacted the Representative on several occasions with complaints. The barking often happens during the night and the barking is causing sleep disruptions to other tenants. The complaining tenants will call the Representative during the night with complaints which causes the Representative sleep disruptions as well. The Representative testified he has heard the dog barking in the Rental Unit on several different occasions.
- [8] The Representative has observed the Tenant's dog off leash on a regular basis around the yard in the Residential Property. Other tenants have complained to the Representative that they do not feel comfortable being outside when the Tenant's dog is off leash. If the Tenant has the dog tied up on a leash, the leash is too long and the dog can still reach other tenants.

- [9] The Tenant's dog has lunged at another tenant with heart problems and that tenant is scared of the dog. The dog has scratched another tenant and a photo of the tenant's scratched hand was submitted into evidence. The dog has dug up some of the yard of the Residential Property.
- [10] On April 1, 2024, the Representative served the Tenant with a warning letter regarding the dog's barking and digging. The warning letter stated that if the dog's behaviour continued then the Tenant would be asked to "vacate the premises." The warning letter stated that at that time the Tenant had two dogs. A copy of the warning letter and a portion of the tenancy agreement regarding pets was submitted into evidence. The tenancy agreement states:

"The Tenant may keep pets on the Property of only: 2 small pets or 1 large pet. If at the sole discretion of the Landlord, this privilege is abused, or if the pets damage the Property, or if the pets cause problems or interfere with the use and enjoyment of the Property for the other tenants, the Landlord may revoke this privilege upon thirty (30) days' notice."

- [11] The Representative submitted into evidence text messages between the parties from May 2024. In the messages the Tenant confirmed that she had received the warning letter and that she was going to fix the yard. The Representative replied that he was more concerned that the Tenant's dog has been lunging, jumping, and nipping at other tenants, and that another tenant's hand was nipped or bitten twice.
- [12] The Representative submitted three videos of the Tenant's dog off leash in the yard of the Residential Property. In one of the videos the dog can be seen jumping at another tenant. The Representative submitted a fourth video of what he stated depicts the Tenant's dog barking in the Rental Unit. The videos were provided to the Representative from another tenant and the Representative stated the videos accurately represent what he has regularly witnessed regarding the Tenant's dog.

Tenant's Evidence and Submissions

- [13] The Tenant's and Tenant's witness evidence is summarized as follows.
- [14] The Tenant agreed she did not get permission to have a dog in the Rental Unit but there are other tenants with dogs in the building. The Tenant stated the dog did get away from her a few times but she always got the dog back under control. She did have two dogs at one time but she was only babysitting the second dog. She stated her dog is still young and energetic and she is trying to train him.
- [15] The Tenant disputed that her dog barks often and there is another dog in the building who also barks. The Tenant admitted she lets the dog off leash in the yard but only when no one else is outside and other tenants allow their dogs to go outside without a leash as well. If there are other people outside then the Tenant will have the dog on a leash.
- [16] The Tenant did not dispute that it was her dog off leash in the videos but disputed that it was her dog barking in the fourth video. The tenant who submitted the videos to the Representative does not like the Tenant and has been trying to get the Tenant into trouble. The Tenant stated that the dog had jumped at a person in one video because that person was playing loud music. The Tenant stated she does not want to get rid of the dog.

ANALYSIS**Issue i: Must the Tenant and all occupants vacate the Rental Unit?**

[17] The reason that the Landlord seeks to end the tenancy is pursuant to clause 61.(1)(d) of the Act:

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.*

[18] The Officer notes that the alleged behaviour would more closely resemble a breach of a material term of the tenancy agreement, however the Landlord did not select this on the Notice. The tenancy agreement states that the Landlord may revoke a tenant's privilege to keep a pet upon thirty days' notice if the pet's behaviour becomes problematic. The Tenant was provided a written warning; however, the Tenant was not provided with thirty days' notice to re-home the pet and was instead served with the Notice.

[19] In Order LR24-45, the Island Regulatory and Appeals Commission made comment regarding a landlord seeking eviction pursuant to clause 61.(1)(d) of the Act:

"The Landlord has not provided a witness who lives in the Premises to testify as to experiencing alleged disturbing behaviour committed by the Tenant's sons. No witness has testified to actually seeing the Tenant's sons in the act of damaging or destroying the Landlord's fire alarms, railings, security door or other property of the Landlord. The Landlord has not provided security camera images or videos to establish who caused the damage and destruction. The Landlord has not provided any reports from the police to link the damage to the Tenant's sons."

[20] 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.

[21] Similar to LR24-45, the Landlord did not provide any witnesses who live in the Residential Property to testify as to experiencing the alleged behaviour of the Tenant's dog. As witnesses, the complaining tenants would have had the opportunity to provide their direct testimony and evidence and to provide context to the Landlord's evidence. This would have assisted in the determination of this matter as the affirmed and direct testimony would have been tested under the scrutiny of examination and cross-examination.

[22] Therefore, based on the evidence submitted, the Officer finds that the Landlord has not established, on a balance of probabilities, that the Tenant has breached clause 61.(1)(d)(i) of the Act.

[23] **Although the Tenant has been successful in this Application to dispute the Notice, the Landlord has clearly demonstrated that it will not tolerate behaviour and actions which disturb/interfere with the daily life of the other tenants. In the future, should the Tenant breach the Act, then the Tenant may be required to vacate the Rental Unit pending the success of a subsequent eviction proceeding.**

CONCLUSION

- [24] The Notice is invalid and the Application is allowed.
- [25] The tenancy agreement shall continue in full force and effect.
- [26] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 27th 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.