

**INTRODUCTION**

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On July 24, 2024, the Landlord served an *Eviction Notice (Form 4(A))* (the “Notice”) to the Tenant. The Notice was served for the following reasons:

*You have permitted an unreasonable number of occupants in the rental unit;*  
*You or someone you have allowed on the property have disturbed or endangered others or put the landlord’s property at significant risk;*  
*You or someone you have allowed on the property has caused damage to the rental unit;*  
*You have not repaired damage to the rental unit;*  
*You have failed to comply with a material term of the tenancy agreement; and*  
*You have knowingly given false information about the rental unit.*

The particulars of termination state:

*“Tenant is hoarding and has 8 cats. Apartment has cockroaches and is filled beyond a reasonable amount of furniture. Apartment smells terrible b/c of cat feces. Cannot move inside the unit because of filth.*

- [3] 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 the Notice.
- [4] The Tenant is also seeking a permanent rent reduction of 10%, compensation of \$500.00, and determinations that:
- a. *the Landlord did not act with due diligence and allowed cockroaches into the building;*
  - b. *the Landlord is responsible to replace all tenants’ belongings;*
  - c. *the Landlord’s employee is not qualified to spray in the rental units;*
  - d. *that the Landlord wants to evict the Tenant to raise the rent;*
  - e. *that the Landlord must inform future tenants of cockroaches in the building;*
  - f. *that the Landlord write an apology letter to the tenants in the building claiming responsibility for the cockroach infestation;*
  - g. *that the Landlord must reduce rent for all tenants by 10% due to the cockroach infestation.*
- [5] On August 23, 2024, a Notice of Hearing was emailed to the parties.
- [6] On September 3, 2024, an evidence package was emailed to the parties.
- [7] On September 5, 2024, a teleconference hearing was held with the Tenant, a Landlord representative (the “Representative”), a Landlord witness, and the Residential Tenancy Officer (the “Officer”).

**ISSUES**

- i. Must the Tenant and all occupants vacate the Rental Unit?
- ii. Is the Tenant entitled to a rent reduction or compensation?
- iii. Is the Tenant entitled to the determinations requested?

**SUMMARY OF EVIDENCE**

- [8] In April 2018, the Landlord and Tenant entered into an oral month-to-month tenancy agreement for the Rental Unit. The Rental Unit is an apartment located in a multi-unit building (the "Residential Property"). Rent is \$957.00 due on the first day of the month and a security deposit of \$500.00 was paid.

**LANDLORD'S EVIDENCE AND SUBMISSIONS****The Representative's evidence is summarized as follows.**

- [9] The Representative served the Notice because the Tenant is a hoarder and there is no space to move or live in the Rental Unit. The Tenant has eight cats in the Rental Unit and the cats have made the Rental Unit unsanitary. The cats have ruined the floor and the Landlord will be required to replace the floor. The entire unit smells of cat urine and feces this is a health hazard. Photographs of the Rental Unit from July 2024 were submitted into evidence.
- [10] There has been a cockroach infestation in the Residential Property and Rental Unit for the past two years. The Landlord hired a pest control company for treatments and then turned the continued treatments over to his staff. The Landlord's staff have attempted to gain access to the Rental Unit on multiple occasions for treatments but the Tenant will either refuse to answer the door or leave before the scheduled treatment. Due to the Tenant's hoarding, the Landlord is not able to effectively treat the Rental Unit because of the number of items in the Rental Unit.
- [11] The Tenant called the Department of Health and complained that the Landlord should not be spraying for cockroaches with certain chemicals. A person from the Department of Health spoke to the Representative about the products being used. The Representative was told that the Landlord could spray with those products without needing any special licensing.

**The Landlord's witness evidence is summarized as follows.**

- [12] The Landlord's witness stated he is the Landlord's maintenance person. The witness has attended the Rental Unit on multiple occasions to attempt to treat the unit. The witness has been able to hear the Tenant inside the Rental Unit but the Tenant will refuse to answer the door. The witness recently used a key to gain access to the Rental Unit for a treatment but the Tenant stated she was not ready for the treatment.
- [13] On July 24, 2024, the Tenant allowed the witness access to the Rental Unit for a treatment. The witness observed a large number of items in the Rental Unit and the witness was not able to effectively spray the unit. The witness took photographs of the Rental Unit on that date and those photographs were submitted into evidence. The witness attended the Rental Unit for another treatment recently and the condition of the unit was still the same.
- [14] The Tenant has several cats living in the Rental Unit and there is a strong smell of cat urine and feces. The floors in the Rental Unit have been damaged by the cat urine on the floor. There is also mold in the unit that cannot be cleaned due to the number of items in the Rental Unit.

**TENANT'S EVIDENCE AND SUBMISSIONS****The Tenant's evidence is summarized as follows.**

- [15] The Tenant disputed that the photographs should be allowed into evidence because the witness attended the Rental Unit to treat for cockroaches and not for an inspection. The Tenant stated that the items in the Rental Unit have been in piles for two years because of the continuous cockroach treatments. She is unable to move items around the Rental Unit every time a treatment is needed so she just leaves everything where it is.
- [16] The Landlord's witness is not qualified to spray for cockroaches. The Tenant called the Department of Agriculture to see if the Landlord was using the correct treatment chemicals. The Representative got angry at the Tenant for doing this and the Tenant had to call the police.
- [17] On July 18, 2024, the witness was scheduled to spray the building but the witness told the Tenant he was not able to treat the Rental Unit the next day between 3:00-3:30 pm. The witness did not show up by 3:25 pm so the Tenant left the Rental Unit because she had plans. On July 22, 2024, the witness told the Tenant that he attended the Rental Unit the previous two days but no one was home. The Tenant stated she was busy those days and was not at the Rental Unit.
- [18] On July 23, 2024, the witness attended for a treatment but the Tenant told the witness not to treat the closets because they were full and not to treat the bedrooms because the cats were in there. The Tenant believes the witness treated those areas against her wishes as she noticed things had been moved after she returned home.
- [19] The Tenant cannot move out of the Rental Unit because the cockroaches have infested everything and she will end up taking the cockroaches with her. The Tenant wants the Landlord to reimburse all tenants for their belongings they will have to discard due to the cockroaches. The Tenant is seeking a 10% permanent reduction in rent for herself and all tenants because of the cockroaches and an apology letter to all tenants from the Landlord. She is also requesting that the Landlord be ordered to inform all new tenants of the cockroaches.
- [20] The Landlord should be held responsible for allowing the tenant into the building who brought cockroaches. The Tenant has paid for her own cockroach treatment and for taxis to travel to purchase totes to store her belongings. She is seeking \$500.00 for these expenses.
- [21] The Tenant believes the Landlord wants to evict her so he can illegally raise the rent. The Tenant disputed the floors are damaged from her cats and stated the damage is from moisture in the Rental Unit. The Tenant stated she has not received a written warning of a breach of a material term of the tenancy agreement.

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

- [22] The reasons that the Landlord seeks to end the tenancy are:
- (1) *A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*
- (c) *there is an unreasonable number of occupants in the tenant's rental unit;*
  - (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;

(f) the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property;

(g) the tenant does not repair damage to the rental unit or residential property, as required under section 28(4), within a reasonable time;

(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;

(j) the tenant knowingly gives false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person.

### Unreasonable Number of Occupants

- [23] One of the options the Landlord selected on the Notice for termination was for "an unreasonable number of occupants in the Rental Unit." The Representative testified that there are eight cats in the Rental Unit and the cats are damaging the Rental Unit. The Officer notes that in the Act the term "occupants" refers to having too many "people" and not too many "pets" occupying a rental unit. If a landlord is seeking to evict a tenant for pets, this would more closely resemble a breach of a material term of a tenancy agreement. Based on the evidence provided, the Officer finds that the Landlord has not established a breach of clause 61.(1)(c) of the Act.

### Lawful Right or Interest of the Landlord

- [24] The Representative testified that the Tenant is hoarding and it is difficult to effectively treat the Rental Unit for cockroaches. The Representative also stated that the Tenant is not co-operating with the treatments. The Landlord submitted photos of the Rental Unit into evidence which were taken on July 24, 2024. The Tenant stated the Landlord attended the Rental Unit for a treatment and not for an inspection and she did not give the Landlord permission to take photographs of the Rental Unit.

- [25] In Order LR24-30, the Island Regulatory and Appeals Commission (the "Commission") made comment regarding a tenant's right to reasonable privacy. The Commission stated:

*"As a final comment, we have concerns about the Landlord taking a video of the Rental Unit without the consent, or even knowledge, of the Tenants. It is clear that the video was taken while the Tenants still occupied the Rental Unit. They were not made aware of the video until the Landlord submitted it into evidence for the purpose of this hearing. The Act clearly states that tenants are entitled to the right to reasonable privacy. This video was a violation of the Tenants' right to privacy. With the benefit of the hearing, and now this Order, the Commission is satisfied that the Landlord is now aware he should not have taken the video under these circumstances without express permission. The Commission wishes to make clear to all landlords on Prince Edward Island that a video made in such circumstances is unacceptable."*

- [26] The evidence establishes that the Landlord's witness was in the Rental Unit on July 24, 2024, to treat the unit for cockroaches, however, there was no evidence that the Tenant was aware that the Landlord's witness was going to take photographs in the Rental Unit. Clause 22.(a) of the Act states that a tenant is entitled to reasonable privacy in a rental unit. In LR24-30, the Commission was critical of a landlord taking a video in a rental unit without the tenant's consent or knowledge.

- [27] Similar to LR24-30, the Officer finds that the Landlord should not have taken photographs in the Rental Unit without the Tenant's consent or knowledge. The Landlord should have provided the Tenant with a 24-notice of inspection stating that photographs were going to be taken of the Rental Unit, or sought the Tenant's permission. As such, the Officer gives no evidentiary weight to the Landlord's submitted photos of the Rental Unit.
- [28] The Landlord stated the Tenant is not co-operating with the treatments. However, there was no evidence submitted by the Landlord of written notices that were provided to the Tenant for any scheduled treatments. There was no evidence that the Landlord provided the Tenant with a schedule for the continuing treatments so she could prepare for them. If proper notice is provided, a Tenant is not required to be home for the treatments to take place.
- [29] The Tenant submitted one notice into evidence stating the Landlord would be spraying on July 18, 2024, but the evidence establishes the witness could not attend the Rental Unit until the next day. The Tenant stated she left her unit at 3:25 pm because the witness was not there between her scheduled time of 3:00-3:30 pm. No evidence was submitted by the Landlord to establish if the witness did attend the Rental Unit that day. Based on the evidence provided, the Officer finds that the Landlord has not established a breach of clause 61.(1)(d) of the Act.

#### **Unreasonable Damage / Fail to Repair Damage**

- [30] The parties agreed that parts of the floor of the Rental Unit have been damaged. The Landlord stated it was damaged due to the cats and the Tenant stated it was due to humidity and moisture in the Rental Unit. Based on the conflicting testimony of the parties and the evidence provided, the Officer finds that the Landlord has not established a breach of clause 61.1(f) or (g) of the Act.

#### **Material Term**

- [31] If a landlord is seeking to terminate a tenancy for a breach of a material term of the tenancy agreement, the landlord would first be required to provide the tenant with a written warning of the breach. The landlord would also be required to provide the tenant with a reasonable time to correct the situation after being given the written notice. In this case, there was no evidence establishing that the Landlord had provided the Tenant with a written warning about a breach prior to being served the Notice. Based on the evidence provided, the Officer finds that the Landlord has not established a breach of clause 61.(1)(h) of the Act.

#### **False Information**

- [32] The Landlord selected "*You have knowingly given false information about the rental unit*" as a reason for termination on the Notice. The Officer notes that this section of the Act refers to a Tenant knowingly giving "*false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person.*"
- [33] The Officer finds that no evidence was submitted to establish that the Tenant provided false information to a prospective tenant, a purchaser viewing the property, or another person. Based on the evidence provided, the Officer finds that the Landlord has not established a breach of clause 61.1(j) of the Act.

**Issue ii: Is the Tenant entitled to a rent reduction or compensation?**

[34] The relevant law is as follows:

**28. Obligation to repair and maintain**

- (1) *A landlord shall provide and maintain the residential property in a state of repair that*
- (a) *complies with the health, safety and housing standards required by law; and*
  - (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

[35] The *Public Health Act Rental Accommodation Regulations* (the "Regulations") state:

**9. Maintenance of premises**

*The owner of any dwelling shall, when necessary*

- (a) *carry out repairs or alterations to such dwelling in order to make it sound, weatherproof, damp-proof, vermin-proof, safe and sanitary in every respect;*
- ...
- (c) *take necessary precautions and undertake necessary treatment to prevent or eliminate infestations by cockroaches, bedbugs, silverfish, weevils, flies, rats, mice and any or all other pests.*

[36] The Tenant is seeking a permanent 10% reduction in rent due to a cockroach infestation and \$500.00 in compensation for travel and materials related to mitigating the cockroach infestation. The parties agreed that the cockroach infestation in the Rental Unit and Residential Property has been occurring for approximately two years.

[37] The evidence establishes that at the time the infestation was reported, the Landlord hired a pest control company to attempt to remediate the infestation. After the pest control company treated the Residential Property, the Landlord then continued the remediation efforts by using the Landlord's staff. The Tenant did not disagree with the Representative's testimony that the treatments have been ongoing.

[38] The Officer finds that the Landlord has taken reasonable steps to address the infestation by hiring a pest control company and by continuing the treatments with his staff. The Officer finds that the Tenant has not established that the Landlord has failed to comply with their obligations under the Act or the Regulations. As the Tenant has not established the Landlord contravened the Act or the Regulations, the Officer finds that the claims for a reduction in rent and compensation are denied.

**Issue iii: Is the Tenant entitled to the determinations requested?**

[39] The Tenant is seeking determinations that:

- a. *the Landlord did not act with due diligence and allowed cockroaches into the building;*
- b. *the Landlord is responsible to replace all tenants' belongings;*
- c. *the Landlord's employee is not qualified to spray in the rental units;*
- d. *that the Landlord wants to evict the Tenant to raise the rent;*
- e. *that the Landlord must inform future tenants of cockroaches in the building;*
- f. *that the Landlord write an apology letter to the tenants in the building claiming responsibility for the cockroach infestation;*
- g. *that the Landlord must reduce rent for all tenants by 10% due to the cockroach infestation.*

- [40] With regards to determinations (a) and (b), as noted above, the Officer finds that the evidence establishes that the Landlord has taken reasonable steps to address the cockroach infestation. There was no evidence establishing that the Landlord failed to act with due diligence and allowed cockroaches into the Residential Property or Rental Unit. As the Landlord has taken reasonable steps to address the infestation, and has complied with their obligations under the Act and Regulations, the Officer finds that the Tenant has not established that she is entitled to determinations (a) or (b), or that the Landlord must replace her belongings.
- [41] With regards to determinations (c) and (d), the Officer finds that the Tenant has not provided sufficient evidence to establish that the Landlord's employee is not qualified to spray in the Rental Unit or that the Landlord wants to evict the Tenant to raise the rent. The Officer finds that the Tenant has not established that she is entitled to determinations (c) or (d).
- [42] With regards to determinations (e), (f) and (g), the Tenant is only able to request a determination as it relates to her tenancy. As the determinations requested relate to other tenants and future tenancies, the Officer does not have the jurisdiction to make these determinations. With regards to an apology letter for the Tenant, the Officer finds that the Landlord has not breached the Act or the Regulations and the Tenant is not entitled to this remedy. The Officer finds that the Tenant has not established that she is entitled to determinations (e), (f) or (g).

### CONCLUSION

- [43] The Notice is invalid and the Application is allowed in part.
- [44] The Officer finds that the Landlord has not established valid grounds for termination of the tenancy agreement.
- [45] The Officer finds that the Tenant is not entitled to a reduction in rent, compensation, or the determinations requested.
- [46] The tenancy agreement between the parties shall continue in full force and effect.

### IT IS THEREFORE ORDERED THAT

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

**DATED** at Charlottetown, Prince Edward Island, this 11th day of September, 2024.

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(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.