

**INTRODUCTION**

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On August 1, 2024, the Landlord served an *Eviction Notice (Form 4(A))* (the “Notice”) to the Tenant and Subtenant. The Notice was served for the following reasons:
- You have permitted an unreasonable number of occupants in the rental unit; Animals; You or someone you have allowed on the property has caused damage to the rental unit.*
- The particulars of termination state:
- “Carpet is ruined due to excessive and unauthorized animals up to 5 cats and an unruly dog unit is a mess.”*
- [3] On August 8, 2024, the Subtenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the “Subtenant Application”) with the Residential Tenancy Office (the “Rental Office”) disputing the Notice.
- [4] The Subtenant Application is also seeking a return of rent due to an unlawful rent increase, a return of the security deposit, and Other: “\$6386.00 pay for \$62 month unlawful rent increase and \$1000 damage deposit for unlawful request” against the Landlord.
- [5] On August 20, 2024, the Tenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the “Tenant Application”) with the Rental Office disputing the Notice.
- [6] On August 20, 2024, a Notice of Hearing was emailed to the parties.
- [7] On August 28, 2024, an evidence package was emailed to the parties.
- [8] On September 3, 2024, a teleconference hearing was held with a Tenant representative (the “Representative”), the Subtenant, a Subtenant witness, the Landlord, and the Residential Tenancy Officer (the “Officer”).

**ISSUES**

- i. Does the Rental Office have jurisdiction to determine the Subtenant Application?
- ii. Must the Tenant and all occupants vacate the Rental Unit?
- iii. Is the Subtenant entitled to a return of rent and return of the security deposit?

**SUMMARY OF EVIDENCE**

- [9] On September 15, 2015, the Landlord and Tenant entered into a written month-to-month tenancy agreement for the Rental Unit, for effect November 1, 2015. On April 11, 2023, the parties signed an updated month-to-month tenancy agreement for effect May 1, 2023. The Rental Unit is one-third of a triplex (the “Residential Property”). Rent is currently \$1,132.00 due on the first day of the month and a security deposit was not required.
- [10] On September 25, 2015, the Landlord and Subtenant entered into a written-fixed term-tenancy agreement for the Rental Unit. Rent was \$1,000.00 per month and a security deposit of \$1,000.00 was required and paid.
- [11] On November 1, 2015, the Tenant and Subtenant entered into a written month-to-month sub-tenancy agreement for the Rental Unit. Rent is \$627.00 due on the first day of the month and a security deposit was not required. The Tenant pays the balance of the rent to the Landlord on behalf of the Subtenant.

**Tenant's Evidence and Submissions**

- [12] The Representative's evidence is summarized as follows.
- [13] The Tenant was not aware of the additional agreement the Subtenant had with the Landlord until 2023. In 2023 the provincial rent cap was increased so the Tenant was able to pay the Landlord a higher amount for rent. The Tenant was able to pay the additional rent the Landlord was seeking instead of the Subtenant. The Tenant does not pay security deposits when they rent from Landlords and will often just take care of the cost of any damages.
- [14] The Tenant does not agree with the reasons in the Notice. The Tenant has inspected the Rental Unit each year the Subtenant has lived in the unit and there have been no issues during that time. The Tenant usually lets their tenants have pets as long as the pets do not cause any damage and are not a problem. In this case, there were no complaints regarding the Subtenant's pets until the Tenant was served the Notice.
- [15] The Representative attended the Rental Unit for an inspection on August 27, 2024, after the Notice had been served. The Representative did not observe any pet odor smell in the Rental Unit and she only noticed some tape on the floor as described by the Subtenant. The boxes in the Rental Unit are there because the Subtenant is packing in case she is evicted. The Representative submitted into evidence the past three inspection reports for the Rental Unit.

**Subtenant's Evidence and Submissions**

- [16] The Subtenant's evidence is summarized as follows.
- [17] The Subtenant entered into a sub-tenancy agreement with the Tenant and her rent is based on her income. The Tenant initially paid \$938.00 to the Landlord on behalf of the Subtenant and the Landlord required the Subtenant to pay an additional \$62.00 per month to equal \$1,000.00 of rent. The Tenant did not require the Subtenant to pay a security deposit but the Landlord required a security deposit of \$1,000.00 from the Subtenant. The Subtenant stated that the extra \$62.00 per month and the security deposit were unlawful and she is seeking a return of rent of \$6,386.00 and the security deposit. The Subtenant did not notify the Tenant of the additional agreement she had with the Landlord until 2023.
- [18] The Subtenant has been living in the Rental Unit for nine years and the Tenant performs a yearly inspection. The Tenant has never brought up any issues with the Rental Unit since she has been living there. The Subtenant believes the Landlord is trying to evict her to make it easier to sell the Residential Property.
- [19] The Landlord was aware of the Subtenant's dog approximately three or four years ago and did not address it as a problem. Another tenant in the Residential Property also has a dog. The Subtenant stated she has five cats but there has never been a complaint from other tenants about the cats and the Landlord has never brought up the issue of the cats until recently.
- [20] The Subtenant disputed that any damage to the yard is because of her dog. She stated a cat did pick at a part of the carpet and her vacuum caught the pick making it worse. The Subtenant put down tape on that part of the carpet so it would not be damaged any further. There are no urine stains, smells, or other damage in the Rental Unit as a result of her pets.
- [21] When the Subtenant moved into the Rental Unit, the closet door was not sliding on the track properly and she removed the door. The door is still in the Rental Unit and it is not damaged. The reason why there are boxes in the Rental Unit is because the Subtenant has begun packing in case she is evicted.

- [22] The Subtenant disputed that she was notified the Landlord's realtor would be taking a video of the Rental Unit. The Subtenant disputes that the video should be in evidence as it is a breach of her privacy. The Subtenant stated the video does not depict a normal realtor walk-thru and focuses more on the cats in the Rental Unit.
- [23] The Subtenant submitted into evidence documents showing that she had been paying the Landlord \$62.00 per month. She also submitted messages between the Landlord and Subtenant, photographs of the Rental Unit, a summary of her evidence, and several reference letters from different individuals.

#### **Landlord's Evidence and Submissions**

- [24] The Landlord's evidence is summarized as follows.
- [25] In 2015 the Subtenant responded to the Landlord's online ad for the Rental Unit and rent and the security deposit was advertised as \$1,000.00 per month. The Landlord and Subtenant entered into a tenancy agreement, separate from the Landlord-Tenant agreement. The Tenant agreed to pay \$938.00 of the rent on behalf of the Subtenant and the Subtenant agreed to pay the remaining \$62.00 to equal the \$1,000.00 rent. The Landlord also required a \$1,000.00 damage deposit which was paid by the Subtenant. On January 1, 2023, the Tenant notified the Landlord that the Tenant would be paying the additional \$62.00 on behalf of the Subtenant.
- [26] The Landlord-Subtenant tenancy agreement states that the Subtenant is entitled to have two cats in the Rental Unit. The Subtenant now has up to five cats and one dog in the Rental Unit and the Landlord did not give permission for the extra pets. He was not aware of the number of cats until he recently saw a listing video taken by his real estate agent. The Landlord stated he is trying to sell the Residential Property and the Subtenant was aware his real estate agent would be taking a video of the unit.
- [27] The carpet in the Rental Unit is damaged due to the cats and there is tape on the carpet on top of some of the damage. There are boxes everywhere in the Rental Unit and a closet door has been removed. The Rental Unit will need extensive cleaning due to the number of animals and litter boxes in the Rental Unit. The lawn of the Residential Property has also been damaged by excessive animal urine. The Rental Unit had been totally redone prior to the Subtenant moving in and this is noted on the September 2015 agreement.
- [28] The Landlord submitted into evidence a summary of his evidence, a September 25, 2015, agreement signed by the Landlord and Subtenant, and a photograph of the yard of the Residential Property. The Landlord also submitted into evidence a video of the Rental Unit which had been taken by the Landlord's real estate agent.

#### **ANALYSIS**

##### **Issue i: Does the Rental Office have the jurisdiction to determine the Subtenant Application?**

- [29] The Subtenant Application was filed against the Landlord disputing the Notice and seeks a return of rent and a return of the security deposit.
- [30] The following definitions are included in the Act:

*1.(n) "rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include*  
*(i) a security deposit, or*  
*(ii) a fee prescribed under clause 107(1)(j).*

1.(w) **“tenancy agreement”** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and the provision of services and facilities.

1.(x) **“tenant”** includes  
(i) a person who is entitled to use or occupy a rental unit under a tenancy agreement.

[31] The evidence establishes that the Landlord and Subtenant entered into a written agreement in September 2015 in which the Subtenant agreed to pay a security deposit and a portion of the rent to the Landlord for the right to possess the Rental Unit. A “tenancy agreement” is defined in the Act as an agreement between a landlord and a tenant respecting possession of a rental unit. In this case, the Officer finds that the written agreement between the Landlord and Subtenant be considered a “tenancy agreement” pursuant to the Act.

[32] As the Subtenant has a tenancy agreement with the Landlord there is a landlord-tenant relationship between the Landlord and Subtenant. The Officer finds that the Rental Office does have the jurisdiction to make a determination regarding the Subtenant Application.

## ANALYSIS

### Issue ii: Must the Tenant and all occupants vacate the Rental Unit?

[33] The reasons that the Landlord seeks to end the tenancy are pursuant to clauses 61.(1)(c) and (d) of the Act which state:

*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; and*

*(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.*

### Unreasonable number of occupants

[34] The Landlord testified that there are up to five cats and a dog in the Rental Unit and he did not give permission to have these many pets. The Subtenant stated the Landlord was aware of her dog two or three years ago and there has never been any prior complaints about the cats.

[35] The tenancy agreement between the Landlord and Subtenant states that the Subtenant was entitled to have two cats. The Officer notes that if a landlord is seeking to evict a tenant for having too many pets in a rental unit, this would more closely resemble a breach of a material term of a tenancy agreement. In this case, the Landlord did not select this option on the Notice and instead selected too many occupants, which refers to having too many “people,” and not too many “pets,” in a rental unit.

[36] If the Landlord was seeking to terminate the tenancy for a breach of a material term of the tenancy agreement, the Landlord would first be required to provide a written warning of the breach. The Landlord would also be required to provide 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 Subtenant with a written warning prior to being served the Notice.

- [37] Based on the evidence provided, the Officer finds that the Landlord has not established that there were/are too many occupants in the Rental Unit or that the Subtenant failed to correct a breach of a material term of the tenancy agreement after being given written notice to do so.

### **Damage**

- [38] The Landlord stated the Subtenant's pets have damaged the carpet in the Rental Unit and the yard of the Residential Property. However, the Landlord did not submit any "before" photographs into evidence to demonstrate the condition of the Rental Unit or yard prior to the start of the tenancy. The best evidence a landlord can provide for these types of applications is "before" and "after" photographs and/or inspection reports to assist in establishing a baseline of the condition of the Rental Unit from before a tenant moves in.
- [39] The Subtenant did acknowledge that a cat and her vacuum caused minor damage to the carpet. The Representative corroborated the Subtenant's evidence by visually inspecting the Rental Unit and by submitting recent inspection reports into evidence. The Officer notes that the Landlord's video does depict some tape on the carpet, however, some wear and tear is to be expected to walking surfaces, such as carpet, in a rental unit over a nine-year time period.
- [40] After reviewing the testimony of the parties and the submitted evidence, the Officer finds that the Landlord has not established that the Rental Unit or Residential Property is in a condition that would warrant a termination of the tenancy agreement. The Officer finds that the Landlord has not established that the Subtenant has breached clauses 61.(1)(c) or (d) of the Act.

### **Issue iii: Is the Subtenant entitled a return of rent and return of the security deposit?**

- [41] The Subtenant Application is seeking the return of an unlawful rent increase and unlawful security deposit from the Landlord. The evidence establishes that at the beginning of the tenancy, the Landlord and the Subtenant signed a tenancy agreement stating that rent was \$1,000.00 and a \$1,000.00 security deposit was required. The Tenant agreed to pay \$938.00 of the rent and the Subtenant agreed to pay the remaining \$62.00 of the rent and the \$1,000.00 security deposit.
- [42] The Officer notes that the tenancy agreement between the Landlord and Subtenant clearly stated what rent was and that a security deposit was required. The Subtenant signed the tenancy agreement and agreed to these amounts. Therefore, the Officer finds that the Subtenant has not established that the Landlord charged the Subtenant an unlawful rent increase or required an unlawful security deposit. This part of the Subtenant Application is denied.

### **CONCLUSION**

- [43] The Notice is invalid.
- [44] The Tenant Application is allowed and the Subtenant Application is allowed in part.
- [45] 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.