

**INTRODUCTION**

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On July 31, 2024, the Applicant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed seeking:
- “To request determination that the occupiers of the house are unauthorized tenants and request an order for removal of the unauthorized tenants from my residential house.”*
- [3] A copy of the Application was served to the Respondent personally on August 3, 2024.
- [4] On August 15, 2024, the Rental Office mailed and emailed the parties notice of a teleconference hearing.
- [5] On August 23, 2024, the Rental Office emailed an evidence package to the parties.
- [6] On August 27, 2024, a teleconference hearing was held with the parties before the Residential Tenancy Officer (the “Officer”) for determination of the Application. The Applicant, two legal representatives for the Applicant, and the Respondent participated in the teleconference hearing.

**ISSUE**

- i. Does the Rental Office have jurisdiction to make a determination regarding the Application?

**SUMMARY OF EVIDENCE**

- [7] In 2020, the Applicant and Respondent entered into an oral purchase and sale agreement for the Respondent to purchase the property (the “Property”). The Property includes a house, barns, and land. Prior to the purchase and sale agreement, the Applicant had owned the Property since 2010.

**APPLICANT’S EVIDENCE AND SUBMISSIONS****The Applicant’s evidence is summarized as follows.**

- [8] The Applicant and the Respondent do not have a landlord-tenant relationship. The parties agreed to an oral purchase and sale agreement for the Respondent to purchase the Property. The Respondent told the Applicant that he planned on doing renovations before moving into the Property.
- [9] The Respondent has not made any payments to the Applicant since August 2023 and has defaulted on their agreement. The Respondent has allowed someone to move into the Property which the Applicant did not agree to. The Applicant stated she is still the owner of the Property and she has a permit to demolish the Property.
- [10] The Applicant submitted into evidence a document titled “*Deed Under Power of Sale*,” insurance documents, and other documents.

**RESPONDENT'S EVIDENCE AND SUBMISSIONS**

**The Respondent's evidence is summarized as follows.**

- [11] The Respondent agreed with the Applicant and stated that the parties do not have a landlord-tenant relationship. The Respondent agreed that the parties had entered into an oral purchase and sale agreement for the Property. The Respondent disagreed with the Applicant and stated the Respondent is the owner of the Property. The Respondent stated that he has a tenant currently living at the Property.

**ANALYSIS**

- [12] The following definitions are included in Section 1 of the Act.

(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);

(o) "**rental unit**" means living accommodation rented or intended to be rented to a tenant and, with respect to a person who rents or intends to rent a mobile home site for the person's mobile home, includes the mobile home site;

(v) "**tenancy**" means a tenant's right to possession of a rental unit under a tenancy agreement;

(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.

Subsection 2.(1) states:

*Subject to section 4, this Act applies to tenancies of rental units.*

- [13] The Act permits the Officer the ability to make a determination of the Application only when there is/was a landlord-tenant relationship, created by a tenancy agreement.
- [14] The parties agreed that they entered into an oral purchase and sale agreement for the Property in 2020. Both parties testified that there was no landlord-tenant relationship and the agreement was not a tenancy agreement. The Applicant stated the Respondent did pay money to the Applicant as a part of the purchase agreement but no payments have been made since August 2023.
- [15] Although the Respondent may have paid money to Applicant for the Property, the Officer finds that the evidence does not establish that the payments are considered "**rent**" or that the payments made reflect that the parties had entered into a tenancy agreement for a "**rental unit**," either express or implied.
- [16] A "**tenancy**" is defined in the Act to mean "*a tenant's right to possession of a rental unit under a tenancy agreement.*" If there is no tenancy agreement, then it follows that there is no "**tenancy**" for the purposes of the Act. The Act applies only to tenancies of rental units and this is stated in clause 2(1) of the Act. If there is no tenancy or tenancy agreement, then the Act does not apply.

- [17] The Application seeks a “*determination that the occupiers of the [Property] are unauthorized tenants and request[s] an order for removal of the unauthorized tenants from my [Property].*” The Officer only has jurisdiction to adjudicate matters which are authorized by the Act. The Officer’s jurisdiction is based upon a landlord-tenant relationship between the parties, pursuant to a tenancy agreement.
- [18] The Officer finds that there is no tenancy agreement between the parties and that the relationship between the parties is not a landlord-tenant relationship governed by the Act. Therefore, the Officer does not have the jurisdiction to adjudicate the matter between the parties or make a determination regarding the Application.

### CONCLUSION

- [19] There is no tenancy agreement between the Applicant and the Respondent and the Rental Office does not have jurisdiction to determine the Application.

### IT IS THEREFORE ORDERED THAT

- I. There is no tenancy agreement between the Applicant and the Respondent.
- II. The Rental Office does not have jurisdiction to determine the Application and therefore the Application is dismissed.

**DATED** at Charlottetown, Prince Edward Island, this 13th 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.