

INTRODUCTION

- [1] On July 2, 2024 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord's Application") with the Residential Tenancy Office (the "Rental Office") pursuant to the *Residential Tenancy Act* (the "Act"). The Landlord's Application seeks vacant possession of the Unit and an order for the Sheriff to put the Landlord in possession.
- [2] The Application was accompanied by an *Eviction Notice (Form 4(A))* dated May 27, 2024, with an effective date of June 18, 2024 (the "Notice"). The Landlord emailed the Tenant the Notice on May 27, 2024.
- [3] The Officer notes that the effective date in the Notice was too early. However, the effective date is automatically changed to June 30, 2024 pursuant to section 54 of the *Act*.
- [4] The Landlord is in fact a corporation and the Unit is located in Charlottetown. The Officer amends the Landlord's name in the Notice and the city name is added pursuant to clause 85(1)(l).
- [5] The following reason for ending the tenancy was selected in the Notice:

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

The particulars of termination stated:

"Disturbing the neighbours, cops called multiple times a month, yelling, screaming, fighting at all hours, tenants & neighbours fear for their safety on a regular basis."

- [6] On July 4, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on July 11, 2024 (the "Notice of Hearing"), along with a copy of the Landlord's Application. On July 5, 2024 the Landlord had a copy of these documents delivered to the Tenant.
- [7] On July 10, 2024 the Rental Office emailed the parties a 43-page evidence package (the "Evidence Package"). The Landlord was requested to serve the Tenant with a paper copy of the Evidence Package.
- [8] On July 11, 2024 a teleconference hearing commenced before the Residential Tenancy Officer (the "Officer"). Two representatives of the Landlord (the "Representatives") and the Tenant participated in the hearing.
- [9] One of the Representative stated that the Landlord received the Evidence Package close to the scheduled hearing time and the documents were not delivered to the Tenant before the hearing. The Tenant stated that she had not received the Notice or the Evidence Package because she did not have access to her former email address (the "Former Email"). The Tenant provided a new email address (the "New Email") and the Officer emailed the Tenant the Evidence Package during the hearing.
- [10] The hearing was adjourned to 9:00 a.m. on July 17, 2024, the parties were permitted to submit additional evidence, and the Tenant was permitted to file a *Form 2(A) Tenant Application to Determine Dispute* seeking to dispute the Notice. The Officer advised the parties that, by allowing a Tenant application disputing the Notice to be filed, the Officer was not making a finding regarding the date of service.
- [11] On July 11, 2024 after the hearing the Tenant filed an application disputing the Notice (the "Tenant's Application") and a copy was served to the Landlord.

- [12] On July 16, 2024 the Rental Office emailed the parties a 21-page supplementary evidence package.
- [13] On July 17, 2024 a teleconference hearing was continued with the Representatives, the Tenant, and the Officer. The parties were permitted to submit additional documents after the hearing.

ISSUES

- i. What date was the Notice served? Was the Tenant's Application filed within 10 days of service?
- ii. Is the Tenant deemed to have accepted the Notice?
- iii. Has the Landlord provided sufficient evidence to prove that the Notice is valid?

SUMMARY OF EVIDENCE

- [14] The Unit has two bedrooms and one bathroom and is located in a three-unit building (the "Residential Property") that the Landlord has owned since September 10, 2019. There is one unit on each level of the Residential Property.
- [15] The Landlord and the Tenant entered into a written, fixed term tenancy agreement for the Unit for the period of October 1, 2023 to September 30, 2024. A security deposit of \$555.00 was paid in October of 2023. Rent in the amount of \$1,111.00 is due on the first day of the month. The Unit had previously been rented to the Tenant's sister.

Landlord's Evidence and Submissions

- [16] The Landlord's evidence is summarized as follows. On May 27, 2024 the Landlord served the Notice to the Tenant by email.
- [17] The Landlord had corresponded with and provided documents to the Tenant by email since the beginning of the tenancy. The Landlord submitted into evidence part of the email correspondence sent to the Tenant through the Former Email.
- [18] The Tenant did not notify the Landlord that she lost access to the Former Email. The Landlord did not receive any error messages after emailing the Notice to the Former Email. The Landlord only became aware of the Former Email problems and the New Email at the July 11, 2024 hearing.
- [19] The Landlord submits that the Tenant and her guests have engaged in behaviour disturbing other occupants of the Residential Property.
- [20] The Charlottetown Police (the "Police") have attended the Unit on multiple occasions to address disturbances, which has made other tenants of the Residential Property feel unsafe. After the hearing, the Landlord submitted into evidence a letter from the Police dated July 17, 2024 (the "Police Letter") providing dates and brief descriptions of 18 dispatches occurring between October 15, 2023 and May 25, 2024.
- [21] On January 8, 2024 the Landlord text messaged the Tenant regarding concerns about incidents at the Unit. On January 10, 2024 the Tenant text messaged the Landlord stating that there were people coming around causing problems and the Tenant had the problems addressed with a "restraining order." However, incidents at the Unit continued after January 10, 2024.
- [22] The Landlord submitted into evidence and reviewed correspondence at the hearing from two other tenants of the Residential Property.
- [23] On February 23, 2024 the Landlord received another complaint from a tenant of the Residential Property regarding a domestic dispute at the Unit. On May 12, 2024 there were disturbances at the Unit including screaming late at night.

- [24] The Landlord submitted into evidence an email containing notes from the Landlord's night auditor of an incident that occurred on May 15, 2024. According to these notes, the Tenant told the night auditor that she had to get away from the Unit because of her abusive boyfriend. The Tenant later told the night auditor that she was also locked out of the Unit by her abusive boyfriend.
- [25] On May 25, 2024 one of the tenants heard disturbing yelling and screaming coming from the Unit as a result of a domestic dispute. There was later a fight in the parking lot. On May 26, 2024 a man was taken away from the Unit in handcuffs.
- [26] On June 5, 2024 the man that was the subject of a restraining order was yelling at the Residential Property. On June 22, 2024 there was another domestic disturbance involving the Tenant.
- [27] The Landlord has continued to receive weekly complaints against the Tenant from the other tenants of the Residential Property, including complaints of vehicle damage. The Residential Property's driveway is right below the Unit's deck. If people are flicking cigarette butts off the deck, then they would land on the cars below.
- [28] The Representatives have not directly witnessed the incidents involving the Tenant at the Residential Property. The incidents have typically occurred late at night and the Representatives have been contacted after the fact. The Representatives have told the tenants to contact the Police when incidents occur.
- [29] The Landlord submitted into evidence the tenancy agreement between the parties, dated September 19, 2023. The tenancy agreement was the *Standard Form of Rental Agreement (Form 1)* prescribed under the former rental legislation, the *Rental of Residential Property Act* (the "RRPA").

Tenant's Evidence and Submissions

- [30] The Tenant's evidence is summarized as follows. The Tenant did not receive the Notice until she received the Evidence Package during the hearing on July 11, 2024.
- [31] The Tenant stated that she did not see the May 27, 2024 Notice until July 11, 2024 because her cell phone was lost or stolen and the Tenant could not access the Former Email. The password for the Former email was stored on the Tenant's former cell phone. The Tenant obtained a new phone in early May of 2024 but the Tenant did not regain access to the Former Email.
- [32] The Tenant submitted into evidence an automatically generated email which indicates that the New Email was set up on June 6, 2024. The Tenant had not thought about providing the New Email to the Landlord. The Tenant had been checking her mail but did not receive anything from the Landlord.
- [33] The Tenant disputes that the Notice is valid.
- [34] The Tenant stated that in the January 10, 2024 text message to the Landlord the Tenant was referring to a restraining order issued by the Police and the Court against a first person that the Tenant had previously dated. This first person has not attended the Unit since January of 2024.
- [35] The Tenant stated that she obtained a second restraining order around May 16, 2024 (the "Second Restraining Order") against a second person ("Person 2") that the Tenant had been dating since February of 2024. The Tenant and Person 2 are not permitted to see each other.
- [36] On May 25, 2024 Person 2 came back to the Unit and was arrested on May 26, 2024 for breaching the Second Restraining Order. The Tenant does not know if Person 2 has come by the Residential Property while the Tenant is away.

- [37] After the hearing the Tenant submitted into evidence two Form 10 – Undertakings dated May 16, 2024 and May 26, 2024 prohibiting Person 2 from going to the Unit.
- [38] In one of the emails submitted by the Landlord there is a reference to a drunk person yelling outside the Residential Property. The Tenant stated that on this occasion the Tenant left the Residential Property.
- [39] The Tenant stated that there was an occasion where the Tenant was not drinking and the Tenant drove home another person that was intoxicated. The Tenant stated that there is a “blow box” in her car which would prevent her from driving while intoxicated.
- [40] The Tenant stated that she has drank wine and smoked marijuana but she had not used any illegal drugs. The Tenant stated that she does not hang around with people that use illegal drugs.
- [41] The Tenant stated that she has not caused or witnessed vehicle damage around the Residential Property. The Tenant denied responsibility for other disturbances claimed in the Landlord’s evidence.
- [42] The Tenant stated that she was sick in bed with pneumonia the three weeks before the second hearing date and she does not understand where the recent complaints against her are coming from.

ANALYSIS

i. **What date was the Notice served? Was the Tenant’s Application filed within 10 days of service?**

- [43] For the reasons below, the Officer finds that the Landlord served the Notice on May 27, 2024. The Tenant’s Application is denied because it was not filed within ten days of the Notice being served.
- [44] Clause 100(1)(d) of the *Act* provides the requirements for electronic service of documents, stating as follows:

A document that is required or permitted under this Act to be given to or served on a person shall be given or served in one of the following ways:

(d) sending the document electronically where

(i) it is provided in the same or substantially the same form as the printed document,

(ii) the other party has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address.

- [45] It appears to the Officer that the Landlord complied with the service requirements of this clause by emailing the Tenant the Notice to the Former Email on May 27, 2024.
- [46] The Officer is satisfied that the Notice was in the same form as the printed document.
- [47] The correspondence submitted by the Landlord shows that the written tenancy agreement was emailed by the Landlord to the Tenant on September 19, 2023, along with documents for pre-authorized rent payments. The Tenant also corresponded with the Landlord in October 2023 regarding an e-Transfer rent payment. Therefore, the Officer finds that the Tenant provided the Landlord with the Former Email for receipt of documents.
- [48] The Landlord submitted into evidence the email showing that the Landlord sent the Notice to the Former Email.

- [49] The Landlord's evidence establishes that the Representatives did not receive any automatic notifications that there was any delivery error regarding the May 27, 2024 email to the Tenant.
- [50] Pursuant to clauses 11(2)(e) and 11(6) landlords are required to provide their tenants with up to date addresses for service and telephone numbers. Tenants are not mentioned in these clauses.
- [51] However, pursuant to clause 100(1)(d) it appears to the Officer that when the Tenant provided the Landlord with an electronic address for the receipt of documents, there was also an ongoing obligation on the Tenant to update the Landlord when the electronic address became inaccessible or changed. The Tenant lost access to the Former Email in early May of 2024 and created the New Email on June 6, 2024. The Tenant did not update the Landlord regarding the Former Email problems and the New Email until the hearing on July 11, 2024.
- [52] For these reasons, the Officer finds that the Notice was served to the Tenant on May 27, 2024.
- [53] The Tenant's Application was not filed until July 11, 2024, well past the filing deadline of ten days after May 27, 2024, ending on June 6, 2024. As a result, the Tenant's Application is denied.

ii. Is the Tenant deemed to have accepted the Notice?

- [54] For the reasons below, the Officer finds that the Tenant is not deemed to have accepted the Notice.
- [55] The Landlord seeks to end the tenancy pursuant to clause 61(1)(d) of the *Act*, which states:

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.*

- [56] However, subsection 61(2) excludes certain family violence behaviour from being a valid basis for terminating a tenancy agreement, stating as follows:

Subsection (1) does not apply if

- (a) the conduct complained of relates to an act specified in clause (1)(d), (e) or (f);*
- (b) the act specified in clause (1)(d), (e) or (f) occurred in connection with the commission of family violence as defined in section 56; and*
- (c) an order specified in clause 56(5)(a) or (b) is in effect against the person who committed the act, or the tenant has provided a statement in accordance with clause 56(5)(c).*

- [57] The Tenant did not file a valid application disputing the Notice, as determined by the Officer above. Normally, the deeming provisions in subsections 61(5) and (6) of the *Act* would end the tenancy agreement by operation of law. However, in the specific circumstances of this case, the Officer finds that the deeming provisions do not apply.
- [58] Subsections 61(5) and (6) of the *Act* are similar to subsections 16(1), (2) and (3) of the *RRPA*. Under this former rental legislation, a problem in the notice of termination itself could prevent deemed acceptance of the notice.

- [59] The Appeal Division of Prince Edward Island's Supreme Court¹ considered an appeal of Order LR02-05, issued by the Island Regulatory and Appeals Commission (the "Commission"). This decision addressed a situation where a tenant had not filed an application disputing a notice of termination.
- [60] The Appeal Division raised an issue with the application of the *RRPA*'s deeming provisions because the landlord's reason for ending the tenancy appeared to conflict with the *RRPA*. The Appeal Division stated as follows:
- "...If the "rules" that were violated by the lessee are contrary to the legislation, there may not be cause for the termination of the lease and then the Commission would have no jurisdiction to approve a Notice of Termination."*
- [61] The evidence provided by the parties indicates that a large portion of the behaviour alleged by the Landlord occurred in the context of family violence where the Tenant was the victim. The Notice was served by the Landlord on May 27, 2024, shortly after the two Form 10 – Undertakings were issued (May 16, 2024 and May 26, 2024) prohibiting Person 2 from going to the Unit. It appears to the Officer that these two undertakings are orders specified by subsection 56(5) of the *Act*.
- [62] Even though the evidence indicates that these incidents disturbed other occupants of the Residential Property, this behaviour cannot be a valid basis for terminating a tenancy agreement due to subsection 61(2).
- [63] As a result, the behaviour involving family violence where the Tenant is a victim cannot be a valid basis for ending the tenancy agreement, regardless of whether a landlord application (Form 2(B)) or a tenant application (Form 2(A)) is the basis for determining the dispute.
- [64] The Officer notes that clause 61(1)(d) includes a wide range of behaviour caused by a tenant or a person permitted on the residential property by the tenant that can lead to the end of a tenancy agreement. As a result, a landlord ought to include detailed particulars of termination in the Notice when selecting this reason.
- [65] The Officer has reviewed the particulars of termination and the Officer cannot disentangle alleged behaviour extending beyond the complaints related to family violence. The particulars do not provide details of the dates, times or identity of the persons that were alleged to have engaged in the claimed behaviour that could distinguish it from the family violence behaviour.
- [66] The Landlord has provided evidence that claims the Tenant or her guests caused vehicle damage. However, the Officer finds that there are insufficient details in the particulars of termination regarding vehicle damage to engage the deeming provisions.
- [67] The Officer finds that the Tenant is not deemed to have accepted the Notice. The Officer will consider whether the Landlord has provided sufficient evidence to terminate the tenancy agreement.
- iii. Has the Landlord provided sufficient evidence to prove that the Notice is valid?**
- [68] The evidence of the parties does not establish, on a balance of probabilities, that the Notice is valid.
- [69] As discussed above, the claims involving family violence where the Tenant was a victim are not a valid basis for ending the tenancy agreement.

¹ *Darville v. MacRae Holdings Ltd.*, 2003 PESCAD, at paragraph [13].

- [70] There are recent Commission cases discussing the importance of having witnesses participate in Rental Office and Commission hearings to provide testimony and answer questions (for example, see Orders LR23-83 and LR24-45).
- [71] The best practice is for a landlord to have the complaining tenants or other witnesses telephone and participate in the hearing. The witnesses would solemnly affirm to tell the truth, provide their testimony, and be available to answer questions regarding their evidence. A landlord should also submit documents to the Rental Office in advance of the hearing that would be referred to by the witnesses during the hearing. It is the responsibility of landlords and tenants to have their witnesses participate in a teleconference hearing, not the Rental Office.
- [72] At the hearings the Tenant denied the claims of vehicle damage and other disturbance alleged in the Landlord's evidence. The Representatives did not directly witness the alleged behaviour. The occupants of the Residential Property that provided written evidence of the incidents did not attend the Rental Office hearing as witnesses. The Police Letter provided by the Landlord contains limited details and no witnesses participated in the hearing to provide their direct evidence of the incidents in this letter.
- [73] The Officer finds that the Landlord has provided insufficient evidence to establish, on a balance of probabilities, that the Tenant breached clause 61(1)(d).
- [74] As a result, the Officer finds that the Notice is invalid and the Landlord's Application is denied.

Tenancy Agreement Form

- [75] The Officer notes that the Landlord prepared and executed a *Standard Form of Rental Agreement (Form 1)* dated September 19, 2023, which was a document prescribed under the *RRPA*.
- [76] The Officer notes that the current *Standard Form of Tenancy Agreement (Form 1)*, based upon the *Residential Tenancy Act*, is available online in the Forms section of the Rental Office's website.
- [77] The *Residential Tenancy Act* has been in force since April 8, 2023 and the tenancy agreement was dated over five months later. The Landlord should be using tenancy agreement forms that comply with the *Residential Tenancy Act*.

CONCLUSION

- [78] The Tenant's Application and the Landlord's Application are denied. The Notice is invalid.
- [79] The tenancy agreement will continue in full force and effect and the Tenant can continue to reside in the Unit.

IT IS THEREFORE ORDERED THAT

1. The tenancy agreement will continue in full force and effect and the Tenant can continue to reside in the Unit.

DATED at Charlottetown, Prince Edward Island, this 18th day of September, 2024.

(sgd.) Andrew Cudmore
Andrew Cudmore
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.