

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On August 5, 2024, the Tenants filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed to dispute an *Eviction Notice* (Form 4(B)) dated July 25, 2024, effective October 25, 2024, (the “Notice”). The Notice was served to the Tenants for the following reason:
- I want possession of the rental unit for my child, parent, or dependent.*
- [3] On August 6, 2024, the Tenants served the Application to the Landlords by email.
- [4] On August 14, 2024, a notice of teleconference was emailed and mailed to the parties.
- [5] On September 6, 2024, an evidence package was emailed to the parties.
- [6] On September 17, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). Both Tenants and both Landlords participated in the hearing.

ISSUE

- i. Must the Tenants vacate the Rental Unit due to the Notice?

SUMMARY OF THE EVIDENCE

- [7] On August 26, 2021, the Tenants and a previous landlord entered into a one-year fixed term tenancy agreement for the Rental Unit, for the period of September 1, 2021, to August 31, 2022. The tenancy agreement then converted to a month-to-month agreement. The Rental Unit consists of one half of a duplex (the “Duplex”). The Landlords purchased the entire Duplex in June 2024 and the tenancy agreement continued. Rent is \$1,200.00 due on the 1st day of the month. A security deposit of \$1,200.00 was paid.

LANDLORDS’ EVIDENCE AND SUBMISSIONS

The Landlords’ evidence is summarized as follows.

- [8] The Landlords are losing money renting out both sides of the Duplex and both sides of the Duplex require renovations so the Landlords can raise the rent. The Landlords are planning on renovating the other side of the Duplex before they renovate the Rental Unit. The Landlords have offered to move the tenant in the other side of the Duplex into the Rental Unit while that tenant’s unit is being renovated. The Landlords require the Tenants to vacate to make room for the tenant on the other side of the Duplex to move into the Rental Unit.
- [9] After the renovations are completed on the other unit, the other tenant will have the option to pay the higher rent and move back into her unit or vacate the Duplex. The Landlords also plan on moving one of the Landlord’s mothers into the Rental Unit after the other tenant vacates, or if the other tenant chooses not to move in. If the Landlords cannot find someone to move into the other side of the Duplex after the renovations then the Landlords may move into that unit. The Landlords stated that it was nothing personal against the Tenants and the eviction is a business decision.
- [10] The Landlords submitted into evidence part of a copy of the tenancy agreement and a letter dated September 1, 2024. The letter is addressed to “To whom it may concern” and states that one of the Landlords’ mothers will be occupying one of the Duplex units after the Landlords are finished with renovations.

TENANTS' EVIDENCE AND SUBMISSIONS

The Tenants' evidence is summarized as follows.

- [11] The effective date on the Notice is incorrect and it should be effective November 30, 2024. The Landlords served the Notice for "personal use", but are planning on re-renting the Rental Unit after they are evicted. There has been a lot of conflicting information as to what the Landlords' plans are. The Landlords stated that a Landlord's mother is to occupy one of the units of the Duplex, while also stating the other tenant or the Landlords are going to occupy the units.
- [12] The Landlords are first offering the Rental Unit to the tenant on the other side of the Duplex. The Landlords told the other tenant that they were not making enough money from the two units and that they had plans to renovate and raise the rent. The Landlords informed the other tenant that if she was not willing to move into the Rental Unit, then that tenant would be issued an eviction notice.
- [13] The reason for eviction on the Notice was that one of the Landlord's mothers was going to occupy the Rental Unit. The Landlords told the tenant on the other side of the Duplex that the Landlords would be occupying her unit. The Landlords' submitted statement also reinforces their intent is to renovate and the Landlords should adhere to the conditions under section 64 of the Act. The Landlords stated that one of their mothers would be moving in after renovations, breaking the requirement for someone to occupy the unit for a 12-month duration.

POST HEARING EVIDENCE AND SUBMISSIONS

- [14] After the hearing the Tenants sent the Rental Office a summary of their testimony from the hearing. A copy was forwarded to the Landlords.
- [15] The Landlords responded to the Tenants' summary with a submission similar to the evidence the Landlords had presented at the hearing. The Landlords did state in their submission that "*now I made the mistake of not going through the proper procedures to get approved on repairs and rent increase, but having said that it's more less renovation/family occupation because [Landlord's] mother needs somewhere to go and we need the Reno's to happen asap at the same time or the damage is gonna get worse.*"
- [16] A copy of the Landlords' submission was provided to the Tenants. No further evidence or submissions were received.

ANALYSIS

Issue i. Must the Tenants vacate the Rental Unit due to the Notice?

- [17] The relevant law is as follows:

62. Landlord's notice for landlord's use of property

- (1) *A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by*

(c) a child, parent or a dependent of the landlord or the landlord's spouse.

64. Landlord's notice for demolition, conversion, repairs, renovations

(1) A landlord may give a notice of termination if the landlord, after obtaining all necessary permits and approvals as required by law, requires possession of the rental unit in order to

- (a) demolish the rental unit;
- (b) convert the rental unit to a non-residential use; or
- (c) subject to the approval of the Director under subsection (2), do repairs or renovations to the rental unit that are so extensive that they require vacant possession of the rental unit.

Director's approval required

(2) Before giving notice for the purpose of clause (1)(c), the landlord shall apply to the Director in accordance with the regulations, providing the information specified by the regulations, and request the Director's approval to provide the notice to the tenant.

- [18] The Officer notes that in such matters where there is a dispute over a Notice of Termination, it is the Landlords' burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice. In this case, the Landlords are seeking termination for a parent of the Landlords to move into the Rental Unit.
- [19] In Order LR19-09, under the previous *Rental of Residential Property Act* (the "Former Act") the Island Regulatory and Appeals Commission (the "Commission") determined an appeal regarding a landlord seeking to end a tenancy agreement for occupation of a rental unit by the landlord. In this decision, the Commission adopted part of the reasoning of an Ontario decision, *Fava v. Harrison*, 2014 ONSC 3352, due to similar wording in the Former Act and Ontario's residential tenancy legislation. The following was stated at paragraph [17] of the *Fava* decision:
- "We accept, as reflected in Salter, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property."*
- [20] The issue for the Officer to determine in this case is similar to LR19-09, as the Officer must establish if there is a *genuine intent* for one of the Landlords' parents to occupy the Rental Unit in order to establish *good faith*. The Officer notes that the type and amount of evidence required to support a termination notice depends on the particular facts of each case.
- [21] The Landlords' evidence is that they are seeking to terminate the tenancy agreement to begin renovations on the Duplex. Although the Landlords are not planning on renovating the Rental Unit at this time, the Landlords are seeking to evict the Tenants to be able to move the other tenant in the Duplex into the Rental Unit, so that unit can be renovated. The Landlords stated that one of the Landlords' parents may move into the Rental Unit at some point, but that date has not been determined. The Landlords submitted that the eviction is "*more less renoviction/family occupation.*"
- [22] In this case, it appears to the Officer that the Landlords are attempting to circumvent the requirements of section 64 of the Act. If the Landlords are seeking to evict any of their tenants for renovations, the Landlords are first required to apply to the Director and request the Director's approval to provide an eviction notice to the tenants. After an approval is granted, the Landlords would then be able to serve a notice of termination to the affected tenants for renovations.
- [23] The Officer finds that there is no evidence establishing that the Landlords have received approval from the Director to serve a notice of termination for renovations. The Officer also finds that the Landlords have not established that they are seeking termination of the tenancy agreement with a genuine intent for one of the Landlords' parents to move into the Rental Unit at this time.

[24] The Officer has reviewed the evidence, the testimony of the parties, and the legislative requirements set out in section 62 of the Act. The Officer finds that the Landlords have not established that they have served the Notice to the Tenants in good faith. The Officer finds that the Notice is not valid and the Application is allowed.

CONCLUSION

[25] The Notice is not valid and the Application is allowed.

[26] The tenancy agreement between the parties shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

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

DATED at Charlottetown, Prince Edward Island, this 23rd day of September, 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.