

**INTRODUCTION**

- [1] The Tenant seeks a monetary Order against the Landlord for bad faith compensation in the amount of \$15,406.25.

**DISPOSITION**

- [2] I find that the Tenant is not eligible for bad faith compensation under the *Rental of Residential Property Act* (the “Former Act”) or the *Residential Tenancy Act* (or the “Act”).

**BACKGROUND**

- [3] The Unit is a two-bedroom, one-bathroom apartment located in a three-unit building (the “Residential Property”).
- [4] The Tenant and the former owner of the Residential Property entered into an oral, month-to-month tenancy agreement that commenced in May or June of 2013. Rent in the amount of \$700.00 was due each month and a \$700.00 security deposit was paid.
- [5] On March 24, 2023 the Landlord’s company purchased the Residential Property from the former owner.
- [6] On March 30, 2023 the Landlord served the Tenant with a *Form 4 Notice of Termination by Lessor of Rental Agreement* pursuant to clause 15(1)(a) of the *Former Act*, for occupation of the Unit by the Landlord and the Landlord’s spouse (the “Notice”). The Notice’s effective date was May 31, 2023.
- [7] On April 25, 2023 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* with the Residential Tenancy Office (the “Rental Office”) to dispute the Notice.
- [8] On May 10, 2023 the Rental Office issued a letter to the Tenant refusing the application because it was not filed within the 20-day deadline stated in subsection 16(2.1) of the *Former Act*.
- [9] On June 5, 2023 the Tenant moved out of the Unit.
- [10] On May 28, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the “Application”) with the Rental Office seeking a monetary order against the Landlord for bad faith compensation.
- [11] On July 23, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for August 20, 2024.
- [12] On August 15, 2024 the Rental Office emailed the parties an evidence package (the “Evidence Package”).
- [13] On August 20, 2024 the Tenant, the Tenant’s witness, the Landlord and the Landlord’s witness participated in the teleconference hearing for determination of the Application. The parties confirmed receipt of the Evidence Package. The parties provided additional evidence and submissions after the hearing.

**ISSUES**

- A. Can the Tenant claim against the Landlord for bad faith compensation under the *Former Act*?
- B. Can the Tenant claim against the Landlord for bad faith compensation under the *Residential Tenancy Act*?

**PRELIMINARY MATTER**

- [14] At the beginning of the hearing the Landlord sought to dismiss the Application on the basis that it was a matter that had already been determined by the Rental Office.
- [15] The Landlord referred to the May 10, 2023 Rental Office letter which refused the Tenant's application disputing the Notice because it was not filed with the Rental Office within the 20-day deadline stated in subsection 16(2.1) of the *Former Act*.
- [16] I advised the parties that the Tenant's claim for bad faith compensation had not been previously determined by the Rental Office and the hearing would proceed as scheduled.

**ANALYSIS****A. Can the Tenant claim against the Landlord for bad faith compensation under the *Former Act*?**

- [17] For the reasons below, I find that the *Former Act* does not authorize monetary claims for bad faith compensation.
- [18] The *Former Act* was in force from January 18, 1989 to April 7, 2023.
- [19] The Landlord served the Notice on March 30, 2023 pursuant to clause 15(1)(a) of the *Former Act*, which stated:

*Where the lessor in good faith seeks to  
(a) have possession of the premises for occupation by himself, his spouse,  
children or parents, or the parents of his spouse;*

...

*the lessor may serve the lessee with a notice of termination to be effective not less than  
two months after it is served.*

- [20] Unlike the *Residential Tenancy Act*, the *Former Act* did not have specific bad faith compensation provisions. In particular, the *Former Act* does not contain the term "bad faith."
- [21] In Order LR24-05 the Island Regulatory and Appeals Commission (the "Commission") recently determined that bad faith compensation was not authorized by the *Former Act*, stating as follows:

*"... The Former Act does not specify a remedy for compensation where a landlord is later determined to have acted in bad faith. While subsection 8(f) might be said to imply statutory authority for a remedy where a landlord acts in bad faith, possible implied authority falls far short of the express statutory authority required to award compensation.*

*Accordingly, there was no express statutory authority for a remedy for a bad faith eviction when the rental agreement terminated and therefore the appeal must be dismissed."*

- [22] The Commission referred to the text *Administrative Law in Canada* (Sara Blake, 7th ed., §4.03), which states:

*"Compensation may not be awarded without express statutory authority."*

- [23] I find that the Tenant cannot validly claim for bad faith compensation under the *Former Act*, as previously determined by the Commission.

[24] The parties provided evidence and submissions regarding whether the Landlord and the Landlord's spouse have in fact "*occupied*" the Unit and whether renovations were the reason for ending the tenancy. However, even if bad faith is established, the Commission has already determined that the *Former Act* does not authorize bad faith compensation.

**B. Can the Tenant claim against the Landlord for bad faith compensation under the *Residential Tenancy Act*?**

[25] For the reasons below, the Tenant is not eligible for bad faith compensation under the *Residential Tenancy Act*.

[26] The tenancy agreement terminated on June 5, 2023 and the Application was filed on May 31, 2024. This Application was filed more than six months after the termination of the tenancy agreement. Normally, claims by a tenant under the *Act* must be made within six months of the end of the tenancy agreement (subsection 75(1)).

[27] However, bad faith compensation claims under section 65 of the *Act* are a limited exception because of the longer, one-year limitation period for filing this type of application (subsection 65(2)). The Tenant filed the Application with the Rental Office within one year of the date the Tenant vacated the Unit.

[28] There are two Commission cases (LR23-48 and LR24-05) denying bad faith compensation claims under the *Act* for tenancy agreements that ended before April 8, 2023, the date the *Act* came into force.

[29] In Order LR23-48 the Commission stated as follows:

*"The Landlord did not give the Tenant any notice of termination under sections 62, 63 or 64 of the RTA. Indeed, the RTA was not yet law when the eviction occurred.*

*While the Landlord did serve a Form 4 back in October 2022 pursuant to subsection 8.(d)(3) of the Rental of Residential Property Act (the "old Act"), section 65 of the RTA does not provide any transitional provisions to permit claims for compensation under the RTA to apply to past evictions under the old Act. Accordingly, the Tenant's application for compensation for an alleged bad faith eviction is denied."*

[30] In this case, although the tenancy agreement ended after April 8, 2023, the Tenant is not eligible for section 65 bad faith compensation because the Notice was served under the *Former Act*.

[31] The service of a notice of termination by a landlord under sections 62, 63 or 64 of the *Act* is an essential element of a bad faith compensation claim because of subsection 65(1), which states:

*A former tenant may make an application to the Director under section 75 to determine whether a landlord gave a notice of termination under sections 62, 63 or 64 in bad faith.*

[32] In other words, in order to qualify for bad faith compensation under the *Act*, a landlord must have given notice to end a tenancy agreement pursuant to sections 62, 63 or 64.

[33] The Tenant was never served with a section 62 notice of termination issued pursuant to the *Act*. Instead, the Tenant was served with a clause 15(1)(a) notice of termination issued under the *Former Act*.

[34] A clause 15(1)(a) notice of termination issued under the *Former Act* is not equivalent to a section 62 notice issued under the *Residential Tenancy Act*.

- [35] Section 62 has a minimum one-year occupation period for the landlord or an eligible family member to occupy the rental unit. Clause 15(1)(a) does not state a specific minimum period. Section 62 requires that a landlord provide a minimum four months' notice to a tenant. Clause 15(1)(a) only requires two months' notice. Section 62 has a different scope of persons eligible for occupation of a rental unit compared to clause 15(1)(a). The section 62 notice of termination is a form approved by the Director of Residential Tenancy. The clause 15(1)(a) notice of termination was a form prescribed by the Lieutenant Governor in Council in the regulations accompanying the *Former Act*.
- [36] For these reasons, I cannot find that a clause 15(1)(a) notice of termination is equivalent to a section 62 notice.
- [37] Further, the Commission has already determined the applicable legislation regarding a clause 15(1)(a) notice of termination served before April 8, 2023 and an application filed after April 8, 2023.
- [38] In Order LR23-44 a tenant was served with a notice of termination for personal use dated February 28, 2023 for effect on June 30, 2023. The tenant did not move out by the effective date and the landlord filed an application with the Rental Office on July 2, 2023 seeking vacant possession of the unit. In the analysis section of the decision, the Commission identified clause 15(1)(a) of the *Former Act* as the relevant law for determining the matter, not section 62 of the *Act*. This is in accordance with the transition provisions in section 112.
- [39] The remedies sought by the Tenant in the Application are based upon subsection 65(6) of the *Act*. As the Tenant was not served with a section 62 notice of termination, the Tenant is not eligible for these remedies.
- [40] For these reasons, the Application is denied.

#### IT IS THEREFORE ORDERED THAT

1. The Application is denied.

**DATED** at Charlottetown, Prince Edward Island, this 4th day of October, 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.