

INTRODUCTION

- [1] The Landlords seeks to terminate the tenancy agreement for their own use pursuant to section 62 of the *Residential Tenancy Act* (the "Act").
- [2] The Tenant disputes the Landlords' reason for ending the tenancy agreement.

DISPOSITION

- [3] I find that the Landlords have not established that there are valid reasons for terminating the tenancy agreement. Therefore, the tenancy agreement shall continue in full force and effect.

BACKGROUND

- [4] The Unit is an apartment in a four-unit building (the "Residential Property").
- [5] In February 2015 the parties entered into an oral month-to-month tenancy agreement for the Unit. Rent in the amount of \$1,139.50 is due on the first day of the month. A \$1,000.00 security deposit was required and paid, however the parties are unsure when it was paid.
- [6] On August 30, 2024, the Landlords served the Tenant personally with a *Form 4 (B) Eviction Notice* (the "Notice") effective on January 1, 2025.
- [7] The Landlords seek to terminate the tenancy agreement for the following reason:
- I want possession of the rental unit for myself and my spouse.*
- [8] On September 12, 2024, the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") disputing the Notice.
- [9] On September 17, 2024, the Rental Office emailed the parties a notice of a teleconference hearing scheduled for October 15, 2024.
- [10] On October 4, 2024, the Rental Office emailed the parties an evidence package.
- [11] On October 15, 2024, a teleconference hearing was held. The Landlord representative (the "Representative") and the Tenant participated in the hearing.

ISSUE

- [12] Must the Tenant vacate the Unit?

ANALYSIS

- [13] The Landlords' reasons for terminating the tenancy are pursuant to clauses 62(1)(a) and (b) of the Act, which state:

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

- (a) the landlord;*
(b) the landlord's spouse.

- [14] 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*, due to similar wording in the Former Act and Ontario’s residential tenancy legislation. The following was stated in 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.”*
- [15] The issue for me to determine is whether there is a *genuine intent* for the Landlords to occupy the Unit for at least one year in order to establish *good faith*. I note that the type and amount of evidence required to support a termination notice depends on the particular facts of each case.
- [16] The Representative testified that the Landlords are flying to Canada from their home country on November 20, 2024, and wish to take possession of the Unit on January 1, 2025. The Landlords are seeking possession of the Unit because one of the Landlords is required to spend a certain amount of time in Canada to obtain their permanent residency status. The Landlords do not know how much time they will be spending in Canada as it will be dependent on the health of a family member still in their home country.
- [17] The Landlords are planning on staying in the Unit for at least eight months to a year, but family circumstances could shorten this time frame. If the Landlords have to return to their home country, they may re-rent the Unit or keep it vacant. The Landlords do own a house in PEI but the Representative is living in that house with his own family. The Landlords are seeking possession of the Unit instead of other units in the Residential Property because the Tenant uses it for a business and the Tenant does not need it for housing.
- [18] The Tenant testified the Landlords recently evicted another tenant in the Residential Property for their own use. The Landlords did not live there for very long and re-rented the unit and raised the rent. The Representative stated the Landlords did evict another tenant in the Residential Property in 2022 for the Landlords’ own use. The Landlords only lived in that unit for a few months as they had to move back to their home country due to an ill family member. That unit was re-rented after the Landlords moved out.
- [19] The Tenant believes the Landlords only want to evict him so they can raise the rent. The Tenant does not live at the Unit full time but he does stay at the Unit if the weather is bad or if he has to work in the area late at night. The Tenant does have another full-time residence but it is far from the Unit, which is in a convenient location for his work.
- [20] I have reviewed the evidence, the testimony of the parties, and the legislative requirements set out in clause 62 of the Act. I find that the Landlords have not established, on a balance of probabilities, that they served the Notice to the Tenant in good faith, or that they will occupy the Unit for at least one year.
- [21] I come to this conclusion as the evidence establishes that the Landlords may only live in the Unit for eight months or less depending on family circumstances. If the Landlords do move out of the Unit before one year, the Landlords may re-rent the Unit. I also find it concerning that the Landlords had evicted a different tenant of the Residential Property in 2022 for their own use, and then re-rented the unit after a few months. I am not satisfied, on a balance of probabilities, that the Landlords will live in the Unit for at least one-year if the tenancy agreement is terminated.

CONCLUSION

[22] I find that the Notice is invalid and the Application is allowed.

[23] The tenancy agreement between the parties will continue in full force and effect.

IT IS THEREFORE ORDERED THAT

1. The tenancy agreement between the parties will continue in full force and effect.

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