

INTRODUCTION

- [1] The Respondent had the Applicants served with notices of termination to vacate the Property based upon occupation of the Property by the Respondent. The Applicants dispute the notices of termination.
- [2] There is a preliminary issue regarding whether the Residential Tenancy Office (the "Rental Office") has jurisdiction (authority) to determine this dispute.

DISPOSITION

- [3] I find that the Rental Office does not have jurisdiction to determine this dispute because the Respondent does not have a tenancy agreement with the Applicants or AW1.

BACKGROUND

- [4] The Property is a four-bedroom, one-bathroom single family dwelling that the Respondent has owned since 2000.
- [5] The Respondent had lived in the Property until September of 2022 when post-tropical storm Fiona arrived ("Fiona").
- [6] The Respondent had the Applicants served with three *Form 4 (B) Eviction Notices* (the "Notices") dated September 26 and September 27, 2024 for occupation of the Property by the Respondent. The Applicants received one of the Notices on September 27, 2024 and the other two Notices on October 2, 2024.
- [7] On October 7, 2024 the Applicants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Rental Office disputing the Notices.
- [8] On October 16, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for November 5, 2024 along with a copy of the Application.
- [9] On October 31, 2024 the Rental Office emailed the parties a twelve-page evidence package (the "Evidence Package").
- [10] On November 5, 2024 one of the Applicants (the "Applicant"), the Applicants' first witness ("AW1"), the Applicants' second witness, the Respondent, and the Respondent's witness ("RW1") joined the teleconference hearing. The parties confirmed receipt of the Evidence Package and confirmed that any documentary evidence they submitted to the Rental Office was included.

PRELIMINARY ISSUE

- A. Does the Rental Office have jurisdiction to determine the dispute between the Respondent and the Applicants or AW1?

ANALYSIS

- [11] All of the participants in the Rental Office hearing are family members. The Applicant and RW1 are grandchildren of the Respondent. AW1 is the Respondent's daughter.
- [12] The parties agree that there is no written tenancy agreement and no security deposit was paid.
- [13] AW1 stated that the Respondent moved from the Property into AW1's house (the "House") in September of 2022 due to Fiona. AW1 and the Respondent lived together in the House until September 23, 2024. AW1 did not charge the Respondent anything to live in the House.

- [14] AW1 stated that in October of 2022 AW1 and the Respondent made an oral agreement for AW1 to purchase the Property when the Respondent's mortgage term ended in June of 2025. AW1 stated that she agreed to pay all of the expenses for the Property. AW1 stated that she has directly paid the Property's insurance, maintenance costs and expenses regarding appliances. AW1 stated that she has also made payments to the Respondent to cover the Property's mortgage principal, interest, property taxes, electricity and internet costs.
- [15] AW1 permitted the Applicants to move into the Property.
- [16] The Respondent stated that there is no agreement for AW1 to purchase the Property. The Respondent stated that she wants to move back into the Property.
- [17] RW1 stated that the Respondent has received payments from AW1 that range from \$530.00 to \$800.00. RW1 questioned the adequacy of the Property's maintenance.
- [18] Regarding the preliminary matter of jurisdiction, I only have authority to determine disputes that are authorized by the *Residential Tenancy Act*.
- [19] Subsections 1(n) and (w) of the *Residential Tenancy Act* define "rent" and "tenancy agreement" as follows:
- "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);
- "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.*
- [20] Based upon the evidence presented, I am not satisfied that the Respondent created a tenancy agreement with the Applicants or AW1. The evidence indicates that the Applicants have come to occupy the Property through a family relationship with the Respondent and not a landlord-tenant relationship with the Respondent. I am not satisfied that the payments from AW1 to the Respondent are rent within the meaning of the *Act*. The evidence presented does not establish that the payments from AW1 to the Respondent are specifically for the right to possess the Property.
- [21] Therefore, I find that the Rental Office does not have jurisdiction to determine any matters between the Respondent and the Applicants or AW1 regarding the Property.
- [22] It is unclear whether a tenancy agreement exists directly between AW1 and the Applicants. I will not make a determination in this decision regarding this other relationship. I note that section 105 of the *Residential Tenancy Act* contains the following requirement regarding court proceedings:
- Despite any other enactment, no order of a court in a proceeding involving a foreclosure or an estate, a proceeding under the Divorce Act (Canada) or the Family Law Act R.S.P.E.I. 1988, Cap. F-2.1, or another proceeding that affects possession of a rental unit is enforceable against a tenant of the rental unit unless the tenant was a party to the proceeding.*

IT IS THEREFORE ORDERED THAT

1. The Rental Office does not have jurisdiction to determine the matter between the Applicants and the Respondent regarding the Property.
2. The Rental Office does not have jurisdiction to determine the matter between AW1 and the Respondent regarding the Property.

DATED at Charlottetown, Prince Edward Island, this 6th day of November, 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.