

INTRODUCTION

- [1] The Landlord seeks to end the Tenant's tenancy based upon a notice of termination.
- [2] The Tenant disputes the termination of the tenancy agreement and seeks a determination the Landlord breached the Tenant's right to quiet enjoyment.

DISPOSITION

- [3] The Landlord has not established a valid basis for ending the tenancy agreement.
- [4] The Tenant has established that the Landlord has breached her right to quiet enjoyment, and the Tenant's rent shall be reduced by \$100.00 for March 2025.

BACKGROUND

- [5] The Unit is an apartment in a multi-unit building (the "Residential Property"). The Tenant moved into the Unit in October 2012 under an oral month-to-month tenancy agreement with the Landlord. The rent for the Unit is \$795.00, due on the first day of the month. The parties were unsure of the amount of the security deposit.
- [6] On August 1, 2024, the parties had a previous Rental Office hearing regarding a dispute over an eviction notice (LD24-252) for the same reasons. In that matter, the eviction notice was found to be invalid.
- [7] On January 7, 2025, the Landlord served the Tenant with a *Form 4 (A) Eviction Notice* (the "Notice"), effective February 30, 2025. This effective date is automatically changed to February 28, 2025, under section 54 of the *Residential Tenancy Act* (the "Act") because there are only 28 days in February 2025.
- [8] The Landlord seeks to terminate the tenancy agreement for the following reasons:
- You are repeatedly late in paying rent;*
You have permitted an unreasonable number of occupants in the rental unit;
You or someone you have allowed on the property have disturbed or endangered others or put the landlord's property at significant risk;
You or someone you have allowed on the property have engaged in illegal activity on the property;
You have failed to comply with a material term of the tenancy agreement despite written warning;
You have knowingly given false information about the rental unit.
- [9] On January 9, 2025, 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 and requesting a determination that the Landlord contravened her right to quiet enjoyment.
- [10] On January 14, 2025, the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 23, 2025. The Landlord requested that the hearing be rescheduled.
- [11] On January 17, 2025, the Rental Office emailed the parties notice of a rescheduled teleconference hearing scheduled for February 4, 2025.
- [12] On January 28, 2025, the Rental Office emailed the parties an evidence package.

- [13] On February 4, 2025, a teleconference hearing was held. The Tenant and the Landlord representative (the "Representative") participated in the hearing. The parties confirmed they received the evidence package, and the Tenant confirmed that all documents submitted to the Rental Office were included in the evidence package. The Landlord submitted no evidence.

ISSUES

- A. Must the Tenant and all occupants vacate the Unit?
- B. Did the Landlord breach the Tenant's right to quiet enjoyment?

ANALYSIS

A. Must the Tenant and all occupants vacate the Unit?

- [14] The Representative stated that he was seeking to evict the Tenant for the following reasons: the Tenant smokes drugs and cigarettes on the Residential Property. The Tenant pays rent late and has moved other individuals into the Unit.
- [15] The Representative stated his reasons for serving the Notice were the same as the last time he served the Tenant an eviction notice. The Landlord stated he would keep trying to evict the Tenant "until I win" because the Rental Office was "incompetent" and IRAC was "useless."
- [16] The Tenant denied the Landlord's allegations. The Tenant stated she submitted the same evidence as the previous Rental Office hearing, and the Rental Office did not order her to be evicted at that time. The Tenant believes the Landlord wants to evict her to raise the rent for the Unit, as she had previously refused to pay an unlawful rent increase.
- [17] The Landlord's reasons for terminating the tenancy are under the following clauses of subsection 61(1) of the Act:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

- (b) the tenant is repeatedly late in paying rent;*
- (c) there is an unreasonable number of occupants in the tenant's rental unit;*
- (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;*
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*
- (i) has caused or is likely to cause damage to the landlord's property,*
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant;*
- (h) the tenant*

(i) has failed to comply with a material term of the tenancy agreement, and

(ii) has not corrected the situation within a reasonable time after the landlord has given written notice to do so;

(j) the tenant knowingly gives false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person.

- [18] In such applications where there is a dispute over an eviction notice, the landlord has the burden of proving, on a balance of probabilities, their reason(s) for terminating the tenancy agreement. This means the landlord must provide the decision-maker with sufficiently clear and convincing evidence to prove their claim(s).
- [19] I find that the Representative has not provided sufficient evidence to establish valid grounds for terminating the tenancy agreement. The Representative submitted no documentary evidence to assist in establishing the allegations in the Notice. The Representative did not give any specific examples or dates of when the alleged behaviour may have occurred. The Representative stated that some of the alleged behaviour was detailed in the Tenant's evidence, but he did not elaborate further as to the evidence he was referring to.
- [20] I agree with the Tenant that these matters have already been determined in Order LD24-252, and I find no reason to disagree with the findings in that Order.
- [21] I find that the Notice is invalid. The tenancy agreement between the parties shall continue in full force and effect.

B. Did the Landlord breach the Tenant's right to quiet enjoyment?

- [22] The Tenant stated that she believes the Landlord is trying to evict her to raise the Unit's rent, as she had previously refused to pay an unlawful rent increase.
- [23] The Landlord stated that his reasons for serving the Notice were the same as the last Rental Office Hearing. The Landlord stated that the Tenant smokes drugs and cigarettes on the Residential Property, pays rent late, and has moved other individuals into the Unit.
- [24] I find that the Landlord has provided no evidence to assist in establishing his reasons for termination. The Landlord stated that he would continue to attempt to evict the Tenant "*until I win*" because the Rental Office was "*incompetent*" and IRAC was "*useless*." I find that serving an eviction notice for the same reasons as a previous hearing without any evidence is an abuse of process. I find that the Tenant has provided sufficient evidence to establish that the Landlord has contravened the Tenant's right to quiet enjoyment under section 22 of the Act.
- [25] Clause 85(1)(e) of the Act states that I may make an order that "*past or future rent shall be reduced by an amount that is equivalent to a reduction in value of a tenancy agreement.*" I find that the Tenant's rent shall be reduced by \$100.00 for March 2025 due to the Landlord's contravention of the Act.
- [26] The Landlord should note that any further breaches of the Act may result in the Landlord being subject to an administrative monetary penalty under section 94 of the Act.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid and the Application is allowed.
2. The Tenant's rent shall be reduced by \$100.00 for March 2025.
3. The tenancy agreement will continue, and the Tenant can continue to live in the Unit.

DATED at Charlottetown, Prince Edward Island, this 10th day of February, 2025.

(sgd.) Mitch King

Mitch 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.