

INTRODUCTION

- [1] The Landlords seek to end the tenancy based upon claims that the Tenant has an unreasonable number of occupants in the Unit and theft of electricity from January to September of 2023.

DISPOSITION

- [2] I find that the Landlords have not established a valid basis for ending the tenancy and the tenancy will continue.

BACKGROUND

- [3] The Unit is a two-bedroom, one-bathroom unit located in a duplex building. There are eight duplexes in the subdivision (the "Residential Property"). The Landlords' family built the Residential Property in 1975.
- [4] The Tenant and a former landlord entered into an oral, month-to-month tenancy agreement for the Unit that commenced in 2013 or 2014. The Tenant did not pay a security deposit. Rent in the amount of \$636.00 is due on the first day of the month.
- [5] The Landlords began managing the Residential Property in November 2022 and later became the owners of the Residential Property at the end of April 2023. The tenancy continued after the Landlords acquired the Residential Property.
- [6] On January 31, 2025 the Landlords served the Tenant with a *Form 4(A) Eviction Notice* effective February 28, 2025 (the "Notice").
- [7] On February 3, 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.
- [8] On February 6, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for February 25, 2025 along with a copy of the Application.
- [9] On February 20, 2025 the Rental Office provided the parties with a 23-page PDF and two videos from the Landlords (the "Evidence Package"). The Landlords provided the Rental Office with three additional videos, which were provided to the Tenant on February 21, 2025.
- [10] On February 24, 2025 the Tenant provided the Rental Office with three additional pages of written evidence, which was provided to the Landlords.
- [11] On February 25, 2025 the Landlords, the Tenant and the Tenant's two witnesses ("TW1" and "TW2") joined the teleconference hearing. The parties confirmed receipt of the Evidence Package, the Landlords' three additional videos and the Tenant's three additional pages of written evidence. The Landlords confirmed that one of videos included was a duplicate, meaning that there are in fact four unique videos.
- [12] The parties confirmed receipt of the evidence and confirmed that all documents submitted to the Rental Office were included. During the hearing orders from a previous Rental Office and Island Regulatory and Appeals Commission (the "Commission") dispute between the parties were added to the record.

ISSUE

- A. Must the Tenant vacate the Unit due to the Notice?

ANALYSIS

[13] For the reasons below, I find that the Landlords have not established a valid basis for ending the tenancy.

Standard Form Eviction Notice

[14] The Landlords' Notice is an earlier version of the Rental Office's standard *Form(A) Eviction Notice*. The Landlords stated that they believed that they had used the most recent form available on the Rental Office's website.

[15] I note that the standard *Form 4(A) Eviction Notice* available on the Rental Office's website is different from the Notice. Specifically, the current standard form has a "*Particulars of termination*" section for a landlord to provide details of the events supporting the eviction.

[16] The Notice provides the following legal bases for ending the tenancy:

- (d) *You have permitted an unreasonable number of occupants in the rental unit;*
- (f) *You or someone you have allowed on the property have engaged in illegal activity on the property;*
- (i) *You have failed to comply with a material term of the tenancy agreement;*
- (k) *You have knowingly given false information about the rental unit;*

[17] The Notice does not contain particulars of the events supporting the eviction. Some of the bases selected on the Notice can include a wide range of events and behaviour.

[18] By including particulars, the details of a dispute and a landlord's bases for ending a tenancy are much clearer.

[19] This uncertainty is reflected in the Tenant's Application's particulars, which state in part:

"Form A

...

(I) – We have no idea what she means

(K) – We have no idea about this – unless she's talking about our friend staying a few days here and there, but [Landlords] believes she's living with us and paying rent."

[20] At the hearing the Landlords stated that they were seeking to end the tenancy for two reasons: (1) since November 28, 2024 the Tenant allowed too many occupants in the Unit; and (2) the Tenant stole electricity from the Landlords from January to September of 2023.

[21] I have determined the Landlords' reasons for ending the tenancy below.

[22] The Landlords submitted evidence regarding the Tenant, particularly video evidence recorded on October 17 and 28, 2022. The Landlords stated that their purpose for submitting this evidence was to show that the Tenant cannot be trusted and he is not credible.

Number of Occupants

[23] The Landlords have the onus to prove, on the civil standard of the balance of probabilities, a valid reason to end the tenancy.

- [24] In Order LR24-64 the Commission made the following comment regarding a landlord ending a tenancy (paragraph 21):
- “The termination of a tenancy is a serious matter and accordingly a Landlord seeking to evict a tenant must put forward compelling evidence...”*
- [25] The Landlords stated that TW2 moved into the Unit on November 28, 2024. TW2 moved into another unit at the Residential Property before Christmas. TW2 then moved back to the Unit on January 26, 2025. Therefore, the Landlords believe that TW2 has lived in the Unit for approximately 54 days.
- [26] The Landlords stated that in November 2024 TW2 told the Landlords she was staying with a friend. On January 31, 2025 TW2 told the Landlords that she was living at the Unit.
- [27] The Landlords stated that they spoke with the Tenant on January 31, 2025 and he denied that TW2 was staying in the Unit.
- [28] The Landlords argue that the Tenant, the Tenant’s girlfriend (TW1) and TW1’s granddaughter are a reasonable number of occupants for the Unit. The Landlords argue that adding TW2 as a fourth occupant is an unreasonable number.
- [29] The Tenant disputes that there are an unreasonable number of occupants in the Unit. The Tenant stated that TW2 is a friend that needed a place to stay a couple nights per week. The Tenant stated that he told the Landlords that TW2 was only staying a couple nights per week.
- [30] TW1 stated that TW2 stays at the Unit sometimes and TW2 also stays with her sister.
- [31] TW2 stated that since November 28, 2024 she has stayed at the Unit as a guest about two or three nights per week. TW2 stated that most of her personal property is currently stored at a U-Haul site. TW2 stated that she signed a tenancy agreement for an apartment, which begins on March 1, 2025.
- [32] TW2 denied telling the Landlords that she was living in the Unit or had moved into the Unit. TW2 stated that she told the Landlords she was staying at the Unit until she found a place.
- [33] The Tenant’s evidence includes a letter dated February 4, 2025 from TW2’s sister. This letter states that TW2 stays with her sister in Cardigan when she does not have appointments in Charlottetown. The appointments occur about two or three times per week.
- [34] I have reviewed the evidence of the parties.
- [35] TW2 provided direct testimony that she typically stays at the Unit two or three nights per week. This is consistent with TW1’s evidence, the Tenant’s evidence and the letter submitted into evidence from TW2’s sister.
- [36] The Landlords do not have direct evidence showing how frequently TW2 has been observed attending the Unit since November 28, 2024.
- [37] The evidence presented does not establish that TW2 has been staying at the Unit more than two or three nights per week on a temporary basis as a guest of the Tenant. I am not satisfied that this amounts to an unreasonable number of occupants under clause 61(1)(c) or a breach of the *Residential Tenancy Act* (the “Act”) justifying termination of the tenancy agreement.
- [38] As a result, this basis for ending the tenancy is not valid.

2023 Electricity Usage

- [39] The Landlords claim that the Tenant stole electricity from the Landlords' fused electrical panel from January to September of 2023. This electricity service was solely for a well water pump for both sides of the duplex.
- [40] The Landlords stated that they had the electricity usage investigated but the Tenant would remove extension cords from the panel before the Landlords' contractors would arrive at the Unit. The Landlords stated that the Tenant's use of the panel could have caused a fire. The Landlords stated that the theft of electricity is mischief and theft under \$5,000.00.
- [41] The Landlords stated that the theft increased their 2023 electricity cost by \$815.49, with the total electricity cost being \$1,270.76. The Landlords submitted into evidence a Maritime Electric customer statement prepared on September 27, 2023.
- [42] The Landlords submitted into evidence a warning letter to the Tenant dated October 5, 2023 regarding the electricity (the "Warning Letter").
- [43] In October 2023 the Landlords' electric panel was disconnected and removed. The Unit's panel was upgraded from fuses to breakers and the well water pump was wired directly to the panel.
- [44] Six of the duplexes' well water pump electrical panels have been removed. The Landlords stated that no other tenants were reimbursed after the panels were removed. In response to the Tenant's evidence, the Landlords stated that the earlier decisions between the parties do not provide for a \$40.00 rent credit.
- [45] The Tenant stated that he had a sump pump hooked up to the plug, which was there when he moved in. The Tenant stated that the electricity issue was already discussed at a meeting a while ago.
- [46] TW1 stated that the electricity issue was settled on September 19, 2023 at an earlier Rental Office hearing. TW1 understood that the Landlords' water well panel would be removed, the electricity cost would be on the Tenant's electricity bill, and the Landlords would give the Tenant a \$40.00 rent credit. TW1 stated that the rent credit was not shown on any of the increase letters so the Tenant paid the full rent to avoid a possible eviction dispute. TW1 stated that this \$40.00 credit since October 2023 would almost cover the electricity amount claimed by the Landlords.
- [47] TW1 argues that the Tenant is paying the water well bill for both sides of the duplex.
- [48] TW1 did not understand why the Landlords later served the Warning Letter because the electricity matter had already been settled at the earlier Rental Office hearing.
- [49] The parties also referred to the earlier Commission decision. The following comment is made at paragraph 35:

"As a preliminary comment, the Landlords claimed expenses for charges to Maritime Electric in 2023 that they say are a result of "theft" from a Tenant. While the Commission accepts that the Landlord incurred electric charges in 2023, we have not considered them operating expenses for the purposes of this Order. This is because the evidence seems to disclose that the Landlords have taken steps to remedy the situation through the installation of a new electrical panel. The expenses, therefore, will not be continued operating expenses moving forward."

- [50] With regard to the electricity dispute, the Landlords seek to end the tenancy under clause 61(1)(e) of the *Act*, which states:

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

- (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.*

- [51] There are two elements to terminating a tenancy agreement under this clause. The first element a landlord must establish is an "*illegal act*." This means that the landlord must prove that the tenant, or a guest of the tenant, engaged in a serious violation of a federal, provincial or municipal law. The law violated does not need to be a Criminal Code offence.
- [52] For the second element, a landlord must establish that the illegal activity was serious enough to have a harmful impact on the landlord's property, other occupants of the residential property, or the landlord.
- [53] Both of these two elements must be proven in order to end a tenancy under clause 61(1)(e).
- [54] The evidence of the parties establishes that there has been no improper electricity usage since the Landlords' water well electrical panel was removed. As a result, there does not appear to be any electricity theft claim against the Tenant from October 2023 to February 2025.
- [55] Based upon the evidence presented, I cannot find that the Tenant engaged in a sufficiently serious behaviour that justifies termination of the tenancy agreement. In particular, the Landlords served the Notice over 15 months after the Landlords issued the Warning Letter to the Tenant. If the electricity usage dispute been of sufficient seriousness to justify termination of the tenancy agreement, then the Notice would need to have been served much earlier.
- [56] As a result, I cannot find a breach of clause 61(1)(e) or a breach of the *Act* justifying termination of the tenancy agreement regarding the electricity dispute.
- [57] I also note that to end the tenancy agreement for breach of a material term the electricity dispute would need to have continued after the Landlords provided written notice to the Tenant (clause 61(1)(h)(ii)). The evidence does not establish improper electricity usage by the Tenant after the Warning Letter was served.
- [58] At the hearing the Landlords also stated that in 2023 they had smoke detectors installed in the rental units of the Residential Property. The Landlords stated that the Tenant told the contractor that he would do the work himself or the work would need to be completed on evenings and weekends. The smoke detectors were eventually installed in the Unit on March 14, 2024. The Landlords argue that the Tenant breached clause 23(b)(i) of the *Act*.
- [59] Similar to the electricity dispute, I also cannot find a breach of the *Act* justifying termination of the tenancy regarding the smoke detector matter due to the amount of time that has passed from March 14, 2024 to January 31, 2025, the date the Notice was served.

[60] I note that clause 61(1)(j) allows a landlord to seek the end of a tenancy if a tenant knowingly gives false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person. Based upon the evidence presented, I cannot find that the Tenant breached this clause.

CONCLUSION

[61] The Notice is invalid and the Application is allowed.

[62] The tenancy agreement will continue in full force and effect.

IT IS THEREFORE ORDERED THAT

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

DATED at Charlottetown, Prince Edward Island, this 28th day of February, 2025.

(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.