

INTRODUCTION

- [1] The Tenant seeks a monetary Order against the Landlords for bad faith compensation due to an eviction notice served for conversion of the Unit to a non-residential use.

DISPOSITION

- [2] I find that the evidence does not establish that the Landlords served an eviction notice for conversion of the Unit to a non-residential use in bad faith.

BACKGROUND

- [3] The Unit was a two-bedroom and one-bathroom apartment located in a four-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 February 2008. Rent in the amount of \$579.34 was due on the first day of the month and heat was an included service. A \$223.57 security deposit was paid.
- [5] On December 1, 2021 the Landlords purchased the Residential Property from the former owner and the tenancy continued.
- [6] On February 12, 2024 the Landlords served the Tenant with a *Form 4(B) Eviction Notice* with an effective date of August 31, 2024 (the "Notice"). The Landlords' reason for terminating the tenancy agreement was to convert the Unit to a non-residential use.
- [7] On February 13, 2024 the Tenant filed an application with the Rental Office disputing the Notice. However, the Tenant and the Landlords settled the dispute where the Tenant would withdraw the application and the Landlords would pay the Tenant moving expenses, a return of rent and return the security deposit (the "Settlement").
- [8] On July 4, 2024 the Tenant returned the Unit's keys to the Landlords, vacated the Unit and the tenancy ended earlier than the effective date of the Notice by mutual agreement.
- [9] On January 14, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks a determination that the Landlord terminated the tenancy agreement in bad faith and seek bad faith compensation under clause 65(1) of the *Residential Tenancy Act* (or the "Act"). The Tenant filed the Application within the statutory time limitation under subsection 65(2) of the Act.
- [10] On January 16, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for February 27, 2025.
- [11] On February 20, 2025 the Rental Office emailed the parties a 59-page PDF document (the "Evidence Package" or "EP").
- [12] On February 21, 2025 the Rental Office emailed the Evidence Package to the Landlords again, because the February 20, 2025 email was not received. The Tenant submitted two additional pages of supplementary evidence. A 3-page PDF document (the "Supplementary Evidence") was sent to the Landlords.
- [13] On February 27, 2025 the Tenant and the Landlords joined the teleconference hearing for determination of the Application. The parties confirmed receipt of the Evidence Package and the Supplementary Evidence and confirmed all documents submitted to the Rental Office were included.

ISSUE

A. Did the Landlords serve the Notice in bad faith?

ANALYSIS

[14] Subsection 65(1) of the *Residential Tenancy Act* permits a tenant to make a bad faith compensation claim, stating as follows:

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.

[15] In order to determine the meaning of bad faith it is necessary to consider the requirements for converting a rental unit to a non-residential use.

Converting a Rental Unit to a Non-Residential Use Requirements

[16] The Landlords served the Notice under subsection 64(1)(b) of the Act, which states:

A landlord may give a notice of termination if the landlord, after obtaining all necessary permits and approvals as required by law, requires possession of the rental unit in order to (b) convert the rental unit to a non-residential use.

[17] A valid eviction notice for converting a rental unit to a non-residential use includes the following requirements:

- Obtain all the necessary permits and approvals as required by law before serving the eviction notice; and
- The eviction notice must comply with the section 53 content and form requirements.

[18] Meeting all these requirements is necessary for a landlord to obtain an order of possession to force a tenant to move out of a rental unit.

[19] I note that clause 64(1)(b) does not reference “good faith” as a requirement. However, reading clauses 64(1)(b) and 65(1) of the Act together, it appears that good faith is a requirement in a 64(1)(b) analysis.

[20] In this case there was no earlier Rental Office decision determining the Notice’s validity because of the Settlement made previously between the parties. The Tenant withdrew their application disputing the Notice and the Landlords paid the Tenant \$1,737.69 for moving expenses and rent. The Landlords also returned the security deposit in the amount of \$223.57. Part of the Settlement also included a one-month extension on the effective date of the Notice (EP58).

[21] I note that the Landlords served the Notice before obtaining all the necessary permits. The Landlords stated that they filed the application for the development permits the following day they served the Notice.

[22] I further note that based upon the evidence presented, the Landlords did not meet the section 64(1) requirements for a valid eviction notice. However, the claim in the Application being decided is not based upon the validity of the Notice. Instead, I must consider a specific requirement of a valid eviction notice, being whether the Landlords acted in good faith or bad faith.

Interpretation of Good Faith

- [23] A landlord acts in good faith when the landlord has a genuine intention to convert a rental unit to a non-residential use. I note that clauses 64(1)(b) and 65(1) of the Act are similar to clauses 50(1)(b) and 57(1)(c) of Ontario's *Residential Tenancy Act*, 2006, SO 2006, c 17.
- [24] In the Ontario Supreme Court decision, *Fava v. Harrison*, 2014 ONSC 3352, the Court considered what is meant by "good faith" in the context of a termination notice for landlord's occupation. The following is stated at paragraph [17] of this 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."*
- [25] This interpretation of "good faith" was accepted by the Island Regulatory and Appeals Commission (the "Commission") in Orders LR19-09, LR19-16 and LR21-50 under the former rental legislation, the *Rental of Residential Property Act*. This also appears to be the Commission's interpretation of good faith under the *Residential Tenancy Act* (see LR24-03 at paragraph 12).
- [26] Based upon this meaning of good faith, I will consider whether or not the Landlords had genuine intention to convert the Unit into a non-residential use.

Interpretation of Bad Faith

Tenant's Evidence

- [27] The Tenant stated that the Settlement's "rent" was the compensation required under section 71 of the Act. After receiving the Notice and signing the Settlement, the Tenant stated that with the uncertainty in the house market, she found a new rental unit for July 1, 2024. The Unit's keys were returned to the Landlords and the Tenant removed her remaining belongings on July 4, 2024.
- [28] The Tenant stated that she signed the Settlement under the impression that the Unit was being converted to a non-residential use. However, the Landlords are advertising the Residential Property for rent (EP24). The advertisement reads "two-bedroom and one-bathroom condo, \$2,300.00 rent per month." The Tenant stated that the Residential Property is now for sale (EP37-38).
- [29] The Tenant stated that the Landlords were aware of the permit requirements, yet they served the Notice before obtaining the required permits. The Tenant provided email correspondence between herself and a municipal clerk (Supplementary Evidence 2-3).
- [30] The Tenant stated that her new rental unit's rent is \$833.00, without heat (EP12). The Tenant stated that she pays an additional \$253.66 in rent, plus electrical heat costs. The Application seeks the difference of the increased portion of rent for the year, in the total amount of \$3,043.92 (\$253.66 multiply 12-months).
- [31] The Tenant is also seeking \$2,000.00 for the additional costs associated with heat. The Tenant stated that the heating source is electrical at the new rental unit. The Tenant submitted two electricity bills to demonstrate her electricity costs (EP11&23). The Tenant also submitted one Maritime Electric bill from the Unit (EP27).
- [32] The Application and the Tenant's written submissions (EP10) request \$5,000.00 in compensation for a bad faith eviction.

[33] The Tenant argues that bad faith compensation should be paid because she received the Notice stating that the Landlords would convert the Unit to a non-residential use, and the Landlords did not ultimately convert the Unit to a non-residential use.

Landlords' Evidence

[34] The Landlords disputed the Tenant's claim of a bad faith eviction.

[35] The Landlords stated that they believed the Settlement's "rent" was for her new rent. The Landlords stated that they believed the Settlement was the end for any further compensation claims.

[36] The Residential Property was a four-unit building being identical two-bedroom and one-bathroom units numbered 1, 2, 3 and 4.

[37] The Landlords stated that the intent behind the Notice was to convert the Residential Property from four units into two units. One side would be for commercial purposes (which included the Unit) and the other side would remain used for residential.

[38] The Landlords stated that on February 13, 2024, the day after the Notice was served they applied for the development permit for commercial use. The Landlords stated that numerous amendments were required throughout the process and there were numerous challenges which required surveyors.

[39] The Landlords stated that the Residential Property was gutted and everything was newly installed. The Residential Property's only remaining feature was its shell. The Residential Property received all new wiring, plumbing and installations. The Residential Property was turned into a duplex, Unit A (which was formerly Units 1 and 2) and Unit B (which was formerly Unites 3 and 4). A fire wall was installed in the middle of the Residential Property to separate Units A and B. Units A and B are both two-bedroom and one-bathroom, open concept with a laundry/utility room.

[40] The Landlords stated that Unit A was supposed to be the commercial unit. However, on July 20, 2024 they received notice that their development permit for commercial use was denied due to parking bylaw requirements. The Landlords stated that on July 22, 2024 they reapplied for residential use for the duplex Residential Property. They received approval on August 14, 2024.

[41] The advertisements submitted into evidence were only from Unit B, and Unit A has not been advertised because it is not yet completed. The Landlords stated that they have put the Residential Property on the market because of the stress caused by the Application.

[42] I have reviewed the evidence of the parties.

[43] For a tenant to be successful, they must first prove, on the civil standard of a balance of probabilities, that a landlord gave an eviction notice under sections 62, 63 or 64 in bad faith. If bad faith is established, then the Director may issue any of the remedies under subsection 65(6) of the Act.

[44] The term "bad faith" is not a defined term under the Act. To determine whether or not the Landlords have served the Notice in bad faith, I must determine if the Landlords had a *genuine intention* to covert the Unit to a non-residential use.

[45] In *Elkins v. Van Wissen*, 2023 ONCA 789, ("*Elkins*") the Ontario Court of Appeal (the "Appeal Court") discussed the test for bad faith. The Appeal Court emphasized the importance of taking a broader approach to the bad faith test, the Appeal Court stated (in paragraph 47):

“Other Board decisions similarly demonstrate a broader approach to the bad faith inquiry under s. 57(1)(b), one that considers the parties’ conduct prior to, at the time of, and subsequent to the giving of the s. 49 termination notice. As I have explained, this broader approach results in a fairer, more meaningful assessment of bad faith in s. 57(1)(b) and accords with the purpose of the RTA to prevent unlawful evictions.”

- [46] I note that in *Elkins* the reason for the eviction was purchaser’s own use and not conversion. However, I find that the legal analysis for determining bad faith under clauses 62, 63 or 64 of the Act is similar and the focus remains *genuine intention*.
- [47] The evidence establishes that the Landlords served the Notice to the Tenants for converting the Unit to a non-residential use under section 64. The Landlords provided direct evidence that A was going to be converted to commercial space, which included the Unit. This required significant upgrades and renovations to the Residential Property.
- [48] The evidence establishes that on July 4, 2024, the Tenant moved out the Unit before the effective date on the Notice (August 30, 2024). The evidence establishes that the Landlords’ plans did not change during this time. However, on July 20, 2024 the Landlords received notice that the development permit for commercial use was denied because of parking bylaw requirements were not met. On July 22, 2024 the Landlords reapplied for a developmental permit for residential use for the two-unit Residential Property.
- [49] In *Elkins*, a broader approach is emphasized. The evidence establishes that from February 12, 2024 (the date the Notice was served) to July 4, 2024 (the date the Tenant vacated) the Landlords intended to use the Unit for a non-residential use. It was not until July 20, 2024 that the Landlords’ intentions changed because of circumstances outside of their control.
- [50] For these reasons, I am satisfied that the Landlords have not acted in bad faith and that bad faith compensation has not been established. The Application is denied.

IT IS THEREFORE ORDERED THAT

1. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 6th day of March, 2025.

(sgd.) Cody Burke

Cody Burke
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.