

INTRODUCTION

- [1] The Tenant seeks a monetary Order against the Landlords and the Former Landlord for bad faith compensation due to an eviction notice served for purchasers' occupation.

DISPOSITION

- [2] I find that the evidence does not establish that the Landlords or the Former Landlord served an eviction notice for purchasers' occupation in bad faith.

BACKGROUND

- [3] The Unit is a two-bedroom, one-bathroom apartment located in the upper level of a four-unit, two-level building (the "Residential Property").
- [4] The Tenant and an earlier owner of the Residential Property entered into an oral, month-to-month tenancy agreement that commenced on December 31, 2004. The Tenant paid a \$200.00 security deposit. The Former Landlord later purchased the Residential Property and the tenancy continued. Rent in the amount of \$660.00 was due on the first day of the month.
- [5] On November 30, 2023 the Former Landlord served the Tenant with a *Form 4(B) Eviction Notice* under section 63 of the *Residential Tenancy Act* (or the "Act") for purchasers' occupation of the Unit by the Landlords (the "Notice"). The Notice's effective date was March 1, 2024.
- [6] On January 3, 2024 the Landlords completed the purchase of the Residential Property from the Former Landlord.
- [7] On February 8, 2024 the Tenant moved out of the Unit.
- [8] On August 26, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") claiming against the Landlords for bad faith compensation.
- [9] On September 5, 2024 the Rental Office mailed and emailed the Tenant and the Landlords notice of a teleconference hearing scheduled for October 10, 2024.
- [10] On October 4, 2024 the Rental Office emailed the Tenant and the Landlords an evidence package.
- [11] On October 10, 2024 the Tenant, the Landlords and the Landlords' interpreter joined the teleconference. The hearing was adjourned as the Tenant considered adding an additional party to the Application.
- [12] On October 21, 2024 the Tenant filed an amended copy of the Application (the "Amended Application") with the Rental Office adding the Former Landlord as a party and providing further details.
- [13] On October 31, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for November 19, 2024.
- [14] On November 15, 2024 the Rental Office emailed the parties an evidence package (the "Evidence Package").
- [15] On November 18, 2024 the Rental Office emailed the parties a supplementary evidence package (the "Supplementary Package").

- [16] On November 19, 2024 the Tenant, the Landlords, the Landlords' interpreter and the Former Landlord participated in a teleconference hearing for determination of the Amended Application. The parties confirmed receipt of the Evidence Package and the Supplementary Package. The parties provided additional evidence and submissions after the hearing.

PRELIMINARY MATTERS

- [17] In the Amended Application the Tenant selected "*To dispute an Eviction Notice [Form 4 (A) or Form 4 (B)].*" The Tenant selected this line regarding the bad faith compensation claim. The Tenant had already moved out of the Unit when the Application and the Amended Application were filed.
- [18] The Tenant also selected "to request the return of his security deposit" because of the \$1,206.59 security deposit paid for his new rental unit. The Tenant does not seek the return of the \$200.00 security deposit he paid for the Unit. The Tenant already told the Landlords they could keep the Unit's security deposit.
- [19] I note that the normal subsection 75(1) timeline for filing an application is six months after the tenancy ended, in this case being August 8, 2024.
- [20] The Application was filed against the Landlords on August 26, 2024 and the Former Landlord was added as a party on October 21, 2024 in the Amended Application. These dates are both past the normal six-month timeline. However, I can consider the Tenant's Amended Application regarding bad faith compensation because there is a longer, one-year timeline under subsection 65(2) for this specific type of claim.

ISSUE

- A. Did the Landlords or the Former Landlord serve the Notice in bad faith?

ANALYSIS

- [21] 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.

- [22] In order to determine the meaning of bad faith it is necessary to consider the requirements for a purchasers' occupation eviction notice and the meaning of good faith.

Purchasers' Occupation Requirements

- [23] The Former Landlord served the Notice under subsection 63(1), which states:

A landlord of a residential property that contains fewer than three rental units who has entered into an agreement of purchase and sale of the residential property may, on behalf of the purchaser, give the tenant of a rental unit in the residential property a notice of termination if the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation by

- (a) the purchaser;*
- (b) the purchaser's spouse;*
- (c) a child, parent or a dependent of the purchaser or the purchaser's spouse; or*
- (d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child, parent or dependent of the purchaser or the*

purchaser's spouse, if the person receiving the care services resides or will reside in the residential property or mobile home park in which the rental unit is located.

[24] Subsections 63(3) and (5) state:

A notice of termination under subsection (1) or (2) is valid only if the tenant has been provided with a sworn affidavit certifying that the purchaser in good faith requires possession of the rental unit for a purpose set out in subsection (1) or (2).

In giving a notice of termination under this section, a landlord shall comply with the requirements of section 53.

[25] Therefore, a valid eviction notice for purchasers' occupation includes the following requirements:

- The residential property has one or two units
- The landlord and a purchaser have entered an agreement of purchase and sale for the residential property
- The purchaser in good faith requires possession of the rental unit for occupation by an eligible family member
- The tenant must be provided with a sworn affidavit certifying that the purchaser in good faith requires possession of the unit
- The notice must comply with the section 53 content and form requirements

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

[27] In this case there is no earlier Rental Office order determining the Notice's validity. The Tenant did not dispute the Notice and moved out before the effective date.

[28] I note that the Residential Property had four units but subsection 63(1) only allows evictions for purchasers' occupation for one or two-unit residential properties. The Tenant was not provided with a purchasers' affidavit, which is required by subsection 63(3).

[29] Based upon the evidence presented, the Former Landlord and the Landlords did not meet the section 63 requirements for a valid eviction notice.

[30] However, the claim in the Amended Application 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 and the Former Landlord acted in good faith or bad faith.

Good Faith

[31] A purchaser acts in good faith when the purchaser has a genuine intention to occupy the selected rental unit.

[32] 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."

- [33] 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).
- [34] Based upon this meaning of good faith, I will consider whether or not the Landlords had a genuine intention to occupy the Unit. The parties’ evidence is summarized below.

Bad Faith

- [35] The Tenant’s evidence is summarized as follows.
- [36] The Tenant received the Notice on November 30, 2023. The Tenant believes that the Landlords selected his Unit because it was well maintained, clean and he never smoked in it.
- [37] After receiving the Notice, the Tenant started looking for a new place to live and he started downsizing his personal property. The Tenant found a new rental unit between January 2 to 4, 2024.
- [38] During the last ten days of January 2024, the Landlords told the Tenant that he could continue living in the Unit. However, by this time the Tenant had already paid a security deposit for his new unit plus an electricity deposit to the City of Summerside. The Tenant had also gotten rid of a lot of his personal property. The Tenant was committed to move to the new rental unit.
- [39] The Tenant argues that bad faith compensation should be paid because he received a Notice stating that the Landlords would move in but the Landlords never moved in. The Tenant has experienced a significant financial burden because of the move caused by the Notice.
- [40] The Landlords’ evidence is summarized as follows.
- [41] The Residential Property is the only building owned by the Landlords on Prince Edward Island. The Landlords are unhappy living in their Summerside rental unit because they had a car stolen from their unit.
- [42] The Landlords had the Notice served because they wanted to live in the Unit with their two girls. The Landlords chose the Unit because it was clean and the Tenant did not smoke in the Unit. The Unit is in better condition compared to the Residential Property’s other three units.
- [43] One of the Landlords (the “Landlord”) became pregnant around the time that the Notice was served. The pregnancy became difficult and the Landlord needed to stay close to the Prince County Hospital for medical reasons.
- [44] On January 4, 2024 the Landlords told the Tenant that he could stay in the Unit. The Tenant told the Landlords that he had two jobs in Summerside and he was happy to move out.
- [45] On March 1, 2024 the Landlord miscarried. The Landlords provided documentary medical evidence for the Landlord.
- [46] The Landlord became pregnant again and the Landlords continue to live in Summerside to be close to the hospital.
- [47] The Landlords argue that they should not have to pay out compensation because they would have lived in the Unit but for their misfortune regarding the Landlord’s pregnancy.
- [48] The Landlords lost two months of rental income for the Unit. The Landlords have completed renovations to the Unit and re-rented it at a higher, above guideline amount.

- [49] The Former Landlord's evidence is summarized as follows.
- [50] The Former Landlord served the Notice because it was required by the agreement of purchase and sale. The Former Landlord submitted into evidence a copy of the agreement. The Former Landlord waited until the last minute to serve the Notice because he did not want to evict the Tenant. The Former Landlord stated that the Tenant was one of the best tenants he ever had.
- [51] I have reviewed the evidence of the parties.
- [52] Based upon the evidence presented, the Tenant, the Landlords and the Former Landlord did not know the additional requirements for serving a valid notice for purchasers' occupation. The Residential Property has four units and the Tenant was not served with a purchasers' affidavit. In this case it has not been established that these missing requirements relate to the Landlords and the Former Landlord's good faith.
- [53] The evidence establishes that the Landlords chose the Unit because it was in good condition. The Landlords provided direct testimony that they intended to move into the Unit. The Landlords provided direct evidence that they had a change in circumstances due to a difficult pregnancy and decided not to move into the Unit. The Landlords also provided documentary evidence supporting the Landlord's medical difficulties.
- [54] The evidence establishes that the Landlords had a genuine intention to occupy the Unit at the time the Notice was served. The Landlords' circumstances changed after the Notice was served due to the Landlord's difficult pregnancy. I note that the parties' evidence presented at the hearing was that in January 2024 the Landlords told the Tenant that he could continue living in the Unit.
- [55] I am satisfied that the Landlords acted in good faith.
- [56] Although the evidence presented indicates a later above guideline rental increase for the Unit, this appears to co-exist with the Landlords' genuine intention to occupy the Unit.
- [57] The evidence also establishes that the Former Landlord did not serve the Notice in bad faith. The Former Landlord served the Notice as required by the agreement of purchase and sale. I am satisfied that the Former Landlord did not have a basis to question the Landlords' good faith.
- [58] I also note that the presumption of bad faith in subsections 65(4) and (5) of the *Act* only applies to evictions under section 62. In this case the Notice was served for purchasers' occupation of the Unit under section 63. Therefore, the presumption of bad faith does not apply in this case.
- [59] For these reasons, I find that bad faith compensation has not been established and the Amended Application is denied.

IT IS THEREFORE ORDERED THAT

1. The Amended Application is denied.

DATED at Charlottetown, Prince Edward Island, this 7th day of March, 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.