

Introduction

- [1] On May 10, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is disputing a Landlord Notice of Termination pursuant to subsection 61.(5) of the Act.
- [2] Attached to the Application was a Landlord Notice of Termination (Form 4A) dated May 3, 2023, effective May 23, 2023, (the "Notice"). The Notice was served on the Tenant for the following reason:
- You have not paid your rent in the amount of \$383.40.*
- [3] On May 3, 2023, the Landlord served the Notice on the Tenant by putting it on the Tenant's door. On May 11, 2023, the Tenant filed the Application with the Rental Office. The Tenant did not serve the Application on the Landlord. The Landlord was sent a copy of the Application by the Rental Office.
- [4] On June 2, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant and the Representative participated.

Issue to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [5] In February 2022 the Tenant and the Landlord entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property is a rental unit situated in 36-unit apartment building. Rent is \$1,550.00 per month due on the first day of the month. A security deposit of \$1,550.00 was paid.

Landlord's Evidence and Submissions

- [6] The Representative stated the Tenant owes the Landlord \$250.00 (\$50.00 x 5 months) for his parking space from January 2023 to May 2023. The Representative stated the Tenant paid the required \$50.00 per month for his parking spot between October 2022 and December 2022 and then the Tenant stopped paying for the parking spot after that. The Representative stated that the Tenant did not have a vehicle at the start of the tenancy agreement but he later got a vehicle. The Tenant was parking in another tenant's parking spot so the Representative required the Tenant to pay for his own parking spot.
- [7] The Representative stated the Tenant cancelled his direct deposit for rent payments in January 2023 but he did not tell the Representative he was doing this. The Representative attempted to collect rent from the Tenant's bank five times (January 2023 to May 2023) and each time the Landlord had to pay a rejected transaction fee of \$33.35. The total fees for the rejected transactions are \$166.75. The Tenant did pay the rent during this time by e-transfer. The Landlord cancelled the direct deposit with the bank before the June 2023 rent could be attempted to be taken out.
- [8] The Representative stated the total amount of outstanding rent the Tenant owes is \$250.00 + \$166.75 = \$416.75.

Tenant's Evidence and Submissions

- [9] The Tenant stated that the Representative would not tell him what the outstanding money on the Notice was for. The Tenant stated he cancelled the Representative's ability to take money directly from his bank account as the Representative would take out "odd amounts" of money that he did not authorize. He stated he told the Representative several times not to take his rent money by direct deposit after he cancelled it. He continued to pay his rent by e-transfer. The Tenant does not believe he should have to pay the bank fees.
- [10] The Tenant referenced having two prior hearings with the Landlord and stated the matter of parking had already been decided in those hearings. He stated there is no original copy of the tenancy agreement, as both the Tenant and the Representative stated the other person kept the original copy of the tenancy agreement. He stated parking and wifi was always included in his rent.

Analysis

- [11] The Notice was served on the Tenant for failure to pay rent. The Landlord stated the Tenant owes the Landlord \$250.00 in unpaid parking fees and \$166.75 in banking fees, totaling \$416.75.
- [12] The *Act* defines "rent" as:
- 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).
- [13] Subsections 20.(2)(c) and (e) of the *Act* state a landlord may charge a fee for:
- (c) *a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;*
- (e) *a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.*
- [14] Subsection 60.(6) of the *Act* states that:
- A landlord may treat unpaid utility charges as unpaid rent and may give a notice of termination under this section where*
- (a) *a tenancy agreement requires the tenant to pay utility charges to the landlord; and*
- (b) *the utility charges are unpaid more than one month after the tenant is given a written demand for payment of them.*
- [15] The Officer notes that subsection 60.(6) of the *Act* specifically mentions allowing a landlord to treat unpaid utility charges as unpaid rent in certain circumstances. However, the *Act* does not state anywhere that unpaid fees can be treated as unpaid rent.

- [16] In this case, the Landlord is seeking a termination of the tenancy agreement for unpaid rent. The Officer notes that banking fees and parking fees do not fall under the definition of “rent” as defined in the *Act*. Therefore, a tenancy agreement cannot be terminated for unpaid fees.
- [17] In the matter of the banking fees and parking fees, the Officer will not make a determination if these fees are owed to the Landlord by the Tenant. At this time there is no application before the Officer from the Landlord requesting payment of these fees from the Tenant.
- [18] Based on the totality of the evidence, the Officer finds that the Landlord has not provided sufficient evidence that the Tenant has breached the *Act* for non-payment of rent.

Conclusion

- [19] The Notice is invalid and the Application is allowed.
- [20] The tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 14th day of June, 2023.

(sgd.) Mitchell King
Mitchell 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 **7** 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.