

Introduction

- [1] On June 16, 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 an Eviction Notice pursuant to subsection 61.(5) of the Act.
- [2] Attached to the Application was an Eviction Notice (Form 4A) dated June 7, 2023, effective August, 7, 2023 (the "Notice"). The Notice was served on the Tenant for the following reasons:
- You have not paid your rent in the amount of \$582.00;*
You are repeatedly late in paying rent; and
You have failed to comply with a material term of the tenancy agreement.
- [3] On July 11, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant and the Landlord participated.

Issue to be Decided

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

Summary of the Evidence

- [4] In or about June 2012, the Tenant and the Landlord entered rental arrangement for the Residential Property. The Residential Property consists of a single one-bedroom unit in an 32 unit complex. Rent is \$582.00 per month and a security deposit of \$150.00 was paid.

Landlord's Evidence and Submissions

- [5] The Landlord's evidence is summarized as follows. The Landlord stated that there is currently \$2,014.00 of rental arrears -- \$268 April and full rent for May, June and July. The Landlord also stated that the Tenant is using the residential premises as a storage facility and that there are significant cleanliness issues.
- [6] The Landlord also testified that she wants to turn the unit into a nightly hotel rental because that will allow her to more quickly recover the lost rent.

Tenant's Evidence and Submissions

- [7] The Tenant's evidence is summarized as follows. The Tenant stated that she is ill and that she has been paying down on her debts. The tenant testified that she has been paying monthly and on time and that the Landlord "must be doing something funny with the accounts".

Analysis

- [8] The relevant sections of the Act instructs,

Landlord's notice for non-payment of rent

60(1) A landlord may end a tenancy if rent is unpaid after the day it is due, by giving a notice of termination effective on a date that is not earlier than 20 days after the date the tenant receives the notice.

Tenant may dispute notice or pay unpaid rent

60(4) *Within 10 days after receiving a notice of termination under this section, the tenant may*

- (a) pay the overdue rent, in which case the notice of termination has no effect; or*
- (b) dispute the notice of termination by making an application to the Director under section 75.*

Tenant presumed to accept notice

60(5) *Where a tenant who has received a notice of termination under this section does not pay the rent or make an application to the Director in accordance with subsection (4), the tenant*

- (a) is deemed to have accepted that the tenancy ends on the effective date of the notice of termination; and*
- (b) shall vacate the rental unit by that date.*

Landlord's right to possession restricted

51(4)(b) *A landlord shall not regain possession of a rental unit unless the Director has made an order directing the tenant to vacate the rental unit and the order has been sent to the sheriff for enforcement.*

- [9] The Tenant was unable to provide any evidence of rent payment, and conversely, the Landlord provided the outstanding rental receipts and logs. Therefore, the Officer finds that the Notice was served on the Tenant for a valid reason and the Tenant did not pay the outstanding rent within 10-days of receiving the Notice. Furthermore, the Tenant did not file a '*Section 75 Application*' with the Rental Office and is therefore deemed to have accepted the Notice. The Officer therefore finds that the Landlord has established a valid basis for terminating the rental agreement due to non-payment of outstanding rent (\$2,014 at the time of the hearing) and that the Tenant is therefore liable for such rent owed to the Landlord.
- [10] The Rental Officer notes that at this time there is no rent owing application being heard, and therefore cannot make any order with respect to the payment of unpaid rent.
- [11] The Rental Officer also notes that there were other alleged causes for eviction in the Notice, however, the Officer does not need to make a determination on the merits for the other causes but notes that based on the photographic evidence provided by the Landlord, the Tenant markedly failed in her obligation to be responsible for the orderly cleanliness of her residential rental as required by section 28(3) of the Act. Section 28(3) of the Act instructs:

28(3) Tenant responsible for ordinary cleanliness

A tenant is responsible for

- (a) ordinary cleanliness of the rental unit and all areas of the residential property used exclusively by the tenant, ... and*
- (b) proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.*

Conclusion

- [12] The Notice is valid and the Application is denied.
- [13] The rental agreement between the parties for the Premises shall terminate effective 11:59 p.m. on August 7, 2023.

IT IS THEREFORE ORDERED THAT

- A. The rental agreement between the parties for the Premises shall terminate effective 11:59 p.m. on August 7, 2023. The Tenant shall vacate the Premises by this time and date.
- B. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.

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

(sgd.) Jeremy Coffin

Jeremy Coffin
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.