

## Introduction

- [1] On September 5, 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 seeking a determination that the Landlord contravened the Tenant's rights and contravened the *Act*.
- [2] The Tenant is seeking as way of remedy emergency access to the rental unit to get his medication and to bath. Further, the Tenant is seeking the continued occupation of the rental unit until he finds new living accommodations on his own terms. Finally, the Tenant is seeking monetary compensation in the amount of \$90.00 for loss of groceries due to a wrongful eviction, \$40.00 for damage to his wrist watch and any other compensation the Officer finds appropriate.
- [3] All the documents were properly served on the parties.
- [4] On September 7, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, with a support person participate in the hearing. A representative of the Landlord and legal counsel for the Landlord participated in the hearing.

## Issue to be Decided

- i. Is the Tenant entitled to the remedies sought?

## Summary of the Evidence

- [5] In June 2020 the Tenant and the Landlord entered into a written fixed term tenancy agreement for a rental unit on the Residential Property. The fixed term converted to a month-to-month agreement. Rent was \$1,272.60 due on the first day of the month. A security deposit of \$1,260.00 was required and paid.

## Tenant's Evidence and Submissions

- [6] The Tenant testified that on September 1, 2023 Sheriff Services, along with police locked him out of the rental unit. The Tenant testified that he was not at the rental unit at the time, and was called by the cleaning lady of the Residential Property who informed him of what was happening. The Tenant testified that he immediately went to the rental unit where the locks were changed and he was not permitted to enter the rental unit by Sheriff Services. The Tenant testified that he needed access to his personal belongings, specifically medication, which the Sheriff entered the rental unit and gave him some of his medication. The Tenant testified that this was a breach of his privacy and he was not provided all the medication he requires. The Tenant testified that he was terrified by the actions and behaviour demonstrated by Sheriff Services. The Tenant testified that he was ultimately handcuffed and restrained by Sheriff Services. The Tenant testified that he is a senior citizen and this was a stressful experience as he suffers from PTSD.
- [7] The Tenant testified that he has been wrongfully evicted by the Landlord. As a result, the Tenant has been living in his vehicle for the past week and continues to live in his vehicle at the time of the hearing.
- [8] The Tenant testified that he was evicted by the Rental Office as of May 31, 2023. The Tenant testified that he appealed that decision to the Island Regulatory and Appeals Commission (the "Commission"). The Tenant admitted that the Commission dismissed his appeal. The Tenant testified that on July 10, 2023 he appealed to the Court. The Tenant admitted that on August 17, 2023 he withdrew his application to the Court. The Tenant testified that he was overwhelmed with the situation, the stress from his PTSD and confusion of the legal system resulted in his withdrawal of the application. The Tenant testified that he paid all his rental arrears and on August 29, 2023 he gave the Landlord's representative two bank drafts in the amount of \$1,270.00 each.

- [9] The Tenant testified that one bank draft was intended for August 2023 rent and the other was intended for September 2023 rent. The Tenant testified that the Landlord's representative accepted both bank drafts and there was no comments or direction to the eviction process. The Tenant testified that he believed when the Landlord's representative accepted his bank draft for September 2023 rent, that the tenancy agreement was renewed or reinstated.
- [10] The Tenant provided additional testimony as it relates to the difficult and souring relationship he has with the Landlord's representative. The Tenant stated that the Residential Property has numerous issues, requires better management and that he has been blamed for damage which he has not done. The Tenant testified that he has been stressed, has lost all quiet enjoyment and privacy and that the Landlord's representative makes up and changes the rules for the Residential Property frequently.

### **Landlord's Evidence and Submissions**

- [11] The Landlord's position is summarized as follows. The Landlord did not dispute the timeline of events as presented at the hearing. The Rental Office does not have the jurisdiction to award the remedies the Tenant is seeking. The Landlord's representative testified that she accepted the two bank drafts from the Tenant on August 29, 2023 because the Tenant owed arrears. The Landlord's representative testified that she believed at the time that the Tenant owes \$371.30 in arrears. The Landlord breaks this down as follows:

- **Total amount owed \$5,442.30.**

Breakdown of amount owed:

- \$351.90 in April 2023 and \$1,272.60 in May 2023; (this amount was Ordered to be paid in Rental Office Order LD23-233 and upheld by the Commission in Order LR23-29).
- \$1,272.60 in June 2023;
- \$1,272.60 in July 2023;
- \$1,272.60 in August 2023.

- **Total amount paid \$6,341.00**

Breakdown of amount paid:

- May 29, 2023 paid \$1,260.00;
- June 28, 2023 paid \$1,271.00;
- July 31, 2023 paid \$1,270.00;
- August 29, 2023 paid \$2,540.00.

- [12] The Landlord's counsel argued that it is reasonable for a landlord to accept rent when there are outstanding arrears. The Landlord's counsel argued that the Landlord's representative accepted the second bank draft (intended for September 2023 rent) because she believed the Tenant owed \$371.30 in arrears. The Landlord's counsel admitted that the Landlord will have to return the remaining balance that the Tenant paid which is \$898.70.
- [13] The Landlord's counsel argued that the Landlord executed a lawful Order to take possession of the rental unit and that the Tenant was Overholding. The Landlord's counsel argued that the Landlord is relying on subsections 74.(1),(2), and (3) of the Act. The Landlord's representative accepted the rent for September 2023 because she was owed outstanding arrears and that she was unaware at the time when Sheriff Services may execute the Order. The Landlord's counsel argued acceptance of rent does not reinstate the agreement. The Landlord's representative testified that she did not tell the Tenant that the tenancy agreement was reinstated when she accepted the bank draft and further testified that due to the sour relationship she would never want to continue with the agreement.

## Analysis

- [14] The Officer notes that the Landlord's position relies upon subsections 74.(1), (2) and (3) of the *Act* which state:

### ***Division 5 – Overholding Tenants***

#### ***Landlord entitled to compensation***

- (1) *A landlord is entitled to compensation for a former tenant's use and occupation of the rental unit after tenancy has been terminated.*

#### ***Acceptance of rent***

- (2) *The acceptance by a landlord of arrears of rent or compensation for use or occupation of the rental unit after notice of termination of tenancy has been given does not operate as a waiver of the notice, as reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree in writing.*

#### ***Burden of proof***

- (3) *The burden of proof that a notice of termination has been waived or the tenancy has been reinstated or a new tenancy created is on the person so claiming.*

- [15] The Officer notes that the timeline of events are not in dispute. On July 5, 2023 the Commission in Order LR23-29 dismissed the Tenant's appeal and found that the tenancy agreement be terminated effective July 31, 2023. On July 10, 2023 the Tenant exercised their statutory right of appeal and appealed to the Court. On August 17, 2023 the Tenant withdrew their application for appeal. On September 1, 2023 the Landlord executed the Commission's Order and Sheriff Services put the Landlord in possession of the Residential Property.
- [16] The Tenant on August 29, 2023, however, paid the Landlord's representative \$2,540.00 in two bank deposits which were intended to be used for August 2023 rent and September 2023 rent. The Tenant argues that the acceptance of these bank deposits constitutes a reinstatement of the old tenancy agreement or the beginning of a new tenancy agreement.
- [17] The Officer finds that despite the unfortunate timing of events, and that as a result of this execution of possession, leaves a senior citizen without shelter, the Landlord executed a lawful Order. Further, the Officer finds that subsections 74.(1), (2), and (3) is clear that the mere acceptance of money for rent does not operate as reinstatement of the tenancy. The Officer finds that the parties did not agree in writing to create a new tenancy, and the evidence does not suggest the parties even contemplated it verbally. The Tenant's assumption or belief of a reinstatement or new tenancy formed does not overcome his burden of proof required by subsection 74.(3) of the *Act*. Therefore, the Officer finds that he cannot provide the Tenant with the right to continuous occupation of the rental unit, and cannot reinstate the tenancy. That claim is denied.
- [18] However, the Officer finds that the Landlord's representative *must* provide the Tenant with access to his personal belongings immediately. The Tenant testified that he has personal belongings and medication that he requires. The Landlord's representative *must* provide the Tenant with access to these items at *his* immediate convenience. The Landlord's representative may have a third party present if she chooses but cannot delay the access. Further, if the Tenant requires additional time to remove larger items such as furniture the Landlord must store the Tenant's personal belongings at the Landlord's cost.

- [19] Finally, the Officer finds that he does not have the legislative power to award the Tenant his monetary remedies for the embarrassment, pain and suffering, and the events that happened on September 1, 2023 with Sheriff Services. The Officer finds that the \$90.00 in loss of groceries and \$40.00 for the damaged watch also cannot be awarded as the evidence does not establish these losses. The Landlord, however, *must* return the remaining money that the Tenant paid on August 29, 2023 for September's rent minus the outstanding rental arrears as calculated based on the Landlord's evidence. The Landlord shall pay the Tenant \$898.70 forthwith.

### Conclusion

- [20] The Application is allowed, in part.
- [21] The tenancy agreement is not reinstated and the Tenant does not have the right to continuous occupation of the rental unit.
- [22] The Landlord must provide the Tenant immediate access to collect his personal belongings in the rental unit at the Tenant's convenience.
- [23] If the Tenant requires additional time to remove his personal belongings, then the Landlord shall store the Tenant's belongings at the Landlord's cost.
- [24] The Landlord shall pay the Tenant \$898.70 forthwith.

### IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement is not reinstated and the Tenant does not have the right to continuous occupation of the rental unit.
- B. The Landlord must provide the Tenant immediate access to collect his personal belongings in the rental unit at the Tenant's convenience.
- C. If the Tenant requires additional time to remove his personal belongings, then the Landlord shall store the Tenant's belongings at the Landlord's cost.
- D. The Landlord shall pay the Tenant 898.70 forthwith.

**DATED** at Charlottetown, Prince Edward Island, this 8th day of September, 2023.

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(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.