

## Introduction

- [1] On September 12, 2023 the Applicant filed a *Tenant Application to Determine Dispute* (Form 2A) dated September 11, 2023 (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application requests a determination of whether or not the parties have a tenancy agreement.
- [2] Due to the nature of the Application, that is, primarily requesting a determination of jurisdiction, the Residential Tenancy Officer (the “Officer”) sought the parties input regarding proceeding with the hearing in writing. This option is provided to the Officer under sub-subsection 80.(1)(b) of the *Act*. The parties had no objection to the hearing proceeding through written submissions.
- [3] Subsection 80.(1) of the *Act* states:

### ***Division 3 – Hearing***

#### ***Hearing procedure***

*The Director may require a hearing of an application under this Act to be conducted*

- (a) *orally, including by telephone, teleconference, or other electronic means which enables the parties to participate in the hearing instantaneously and simultaneously;*
- (b) *in writing; or*
- (c) *partly orally and partly in writing.*

- [4] On October 3, 2023 the Rental Office provided the parties with a Notice of Hearing and signed letter from the Officer confirming the details of the Paper-Based Hearing and provided the parties an October 6, 2023 deadline. Both parties provided written submissions and supported documentary evidence by the deadline and no extensions were requested or necessary.
- [5] On October 6, 2023 the Officer started reviewing and deliberating the parties’ submissions and evidence.

## Issue to be Decided

- i. Is there a tenancy agreement between the parties?

## Summary of the Evidence

- [6] The submissions and evidence of the parties are summarized below.

### **Applicant’s Evidence and Submissions**

- [7] The Applicant’s position is that she is a tenant and the relationship she has with the respondent is a landlord-tenant relationship. The Applicant provided into evidence a 1-page written submission and a photograph of an e-transfers to the Respondent in the amount of \$600.00 dated August 28, 2023 and September 29, 2023.
- [8] The Applicant’s submissions are summarized as follows. The former landlord and his common-law partner resided in the Residential Property for over twenty years. In October 2021 the former landlord passed away. In November 2021 the Residential Property transferred ownership to the former landlord’s common-law partner and the Respondent. The former landlord’s common-law partner remained living in the Residential Property as a co-owner.

- [9] In January 2022, an individual, T.M., moved into the Residential Property. T.M. resided in a room in the Residential Property, paid \$300.00 in rent and split the utilities. In October 2022 the Applicant moved into the Residential Property. The Applicant resided in a room in the Residential Property, paid \$300.00 and split the utilities with T.M. and the co-owner. No damage deposit was required.
- [10] The Applicant admits that there is no written tenancy agreement, however, the Applicant argues that a tenancy agreement does not have to be in writing and relied on the definition of *tenancy agreement* in the *Act*. Additionally, the Applicant argued that a tenancy agreement does not require a damage deposit. The Applicant referenced subsection 14.(1) of the *Act* emphasizing that a landlord “may” require a security deposit.
- [11] The Applicant argued that after the co-owner passed away the Respondent became the sole owner of the Residential Property, and the landlord. The Applicant cites subsection 11.(5) of the *Act*. The Applicant submitted that rent was paid on August 28, 2023 and September 29, 2023 both e-transferred and accepted by the Respondent.
- [12] The Applicant submitted that the Respondent sent a letter on August 28, 2023 requesting the Applicant to vacate the Residential Property no later than September 30, 2023. The Applicant filed the Application because the Respondent should give the Applicant a *Notice of Termination by Landlord* as required by the *Act* with proper notice.

#### **Respondent’s Evidence and Submissions**

- [13] The Respondent’s position is that she is not in a tenancy agreement with the Applicant and that there was never a landlord-tenant relationship with the co-owner and the Applicant. The Respondent argues that the Rental Office has found that it has no jurisdiction in other decisions which have similar sets of facts. The Respondent submitted to the Officer, Order LD23-324 to assist their position. The Respondent submitted into evidence a signed affidavit, copies of invoices, text messages and photographs.

#### **Analysis**

- [14] To begin, the Officer references subsections 2.(1) and (2) of the *Act* which states:

***What this Act applies to***

*Subject to section 4, this Act applies to tenancies of rental units*

***Application to tenancy agreements***

*Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before, on or after the date this Act comes into force.*

- [15] The Officer notes that he only has the jurisdiction to adjudicate matters which are under the *Act*. To determine this the Officer must find that there is a landlord-tenant relationship between the parties, which is agreed upon by a tenancy agreement. For such clarity, the Officer reviews sections 1.(h), (x) and (w) of the *Act*, which sets out the definitions of “landlord”, “tenant” and “tenancy agreement”:

(h) **"landlord"**, in relation to a rental unit, includes

(i) *the owner of the rental unit, the owner's agent or another person who, on behalf of the owner,*

(A) *permits occupation of the rental unit under a tenancy agreement, or*  
(B) *exercises powers and performs duties under this Act or a tenancy agreement,*

(ii) *the heirs, assigns, personal representatives and successors in title to the owner,*

(iii) *a person, other than a tenant occupying the rental unit, who*

(A) *is entitled to possession of the rental unit, and*  
(B) *exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit, and*

(iv) *a former landlord, as the context requires.*

(x) **"tenant"** includes

(i) *a person who is entitled to use or occupy a rental unit under a tenancy agreement,*

(ii) *the assigns and personal representative of a person referred to in subclause (i), and*

(iii) *when the context requires, a former or prospective tenant.*

**"tenancy agreement"** *means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and the provision of services and facilities.*

[16] The Officer finds that there is no tenancy agreement between the parties and that the relationship between the parties is not a landlord-tenant relationship. Therefore, the Officer does not have the jurisdiction to adjudicate the matter between the parties.

[17] After reviewing the documentary evidence and written submissions from the parties, the Officer finds that there is not enough evidence to suggest to the Officer that a tenancy agreement exists between the Applicant and the deceased co-owner of the Residential Property. The Officer finds that the evidence suggests that the most likely scenario was that the Applicant, and T.M moved into the Residential Property with the deceased co-owner to assist in the household expenses, upkeep of the property and to provide assistance to the deceased co-owner. Further, the Officer notes that all the parties involved are family members, which assists the Officer in making this finding. The Officer finds that there is not enough evidence to conclude that the relationship between these parties was formal and intended to be a landlord-tenant relationship.

**Conclusion**

[18] There is no tenancy agreement between the parties as there is no landlord-tenant relationship.

[19] The Rental Office does not have the jurisdiction to adjudicate this matter.

**IT IS THEREFORE ORDERED THAT**

A. There is no tenancy agreement between the parties as there is no landlord-tenant relationship.

B. The Rental Office does not have the jurisdiction to adjudicate this matter.

**DATED** at Charlottetown, Prince Edward Island, this 16th day of October, 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.