

Introduction

- [1] On October 10, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking the following remedies:

To request an order directing my tenant to pay outstanding rent;

To request my tenant, vacate the rental unit and ordering the Sheriff to put me into possession of the rental unit.

- [2] Attached to the Application was a *Landlord Notice of Termination* (Form 4A) dated September 7, 2023 effective October 8, 2023 (the "Notice"). The Notice was given to the Tenant for the following reasons:

You have not paid your rent in the amount of \$1,000.00; and

You are repeatedly late in paying rent.

- [3] All documents were properly served on the parties.

- [4] On October 19, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). S.W., a representative for the Landlord appeared on behalf of the Landlord. B.C., a representative for one of the Tenants appeared, representing the Tenant. The other tenant (L.L.) did not appear and did not have a representative at the hearing.

Issues to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?
- ii. Does the Tenant (L.L.) owe outstanding rent to the Landlord?

Summary of the Evidence

- [5] On October 13, 2021 the Landlord and the Tenant, (L.L.), entered into a written fixed term tenancy agreement for the Residential Property. The tenancy agreement converted to a month-to-month agreement. Rent is \$2,200.00 due on the first day of the month. A security deposit of \$2,200.00 was required and paid. On November 4, 2021 the Landlord and the Tenant (K.S.) entered into a written month-to-month tenancy agreement for the Residential Property. K.S., provides financial assistance to the Tenant (L.L.). K.S.'s rent was \$1,200.00 due on the first day of the month. No security deposit was required.

Landlord's Evidence and Submissions

- [6] S.W. testified that the Tenant (L.L.) has not paid September and now October 2023 rent. S.W. testified that the Tenant (L.L.) is regularly late paying rent. S.W. testified that she gave the Tenant (L.L.) numerous eviction notices from June to September 2023. S.W. testified that on September 7, 2023 she served the Notice on the Tenant (L.L.) by e-mail. The Tenant (L.L.) continues to reside in the Residential Property and the last payment of rent from the Tenant (L.L.) was on August 10, 2023. S.W. testified that the Tenant (L.L.) owes \$1,000.00 for September 2023 rent.
- [7] The Landlord submitted into evidence written submissions, a copy of the tenancy agreements, a copy of the e-mail service of the Notice, text message conversations between S.W. and L.L. and a list of the e-transfer payments made by the Tenant (L.L.) for rent dating back to November 2, 2022.
- [8] S.W. testified that the Tenant (K.S.) has never missed a payment of rent, and has cooperated throughout the tenancy.

Tenants' Evidence and Submissions

- [9] The Tenant (L.L.) did not participate at the hearing and did not submit any evidence.
- [10] The Tenant (K.S.) had a representative (B.C.) appear at the hearing to provide testimony. Further, written submissions were provided into evidence. B.C. testified that the Tenant (K.S.) is not disputing the Notice as they are named in the Notice along with the Tenant (L.L.). B.C. testified that they are looking to terminate the agreement to finance the Tenant (L.L.) and are cooperating with the Landlord.

Analysis

- [11] The Officer begins by referencing the relevant law for the Application. The Landlord's reason for terminating the tenancy agreements are pursuant to sub-subsections 60.(1) and 61.(1)(b) of the *Act*, which state:

60. Landlord's notice for non-payment of rent

- (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.*

61. Landlord's notice for cause

- (1) *A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*
- (b) *the tenant is repeatedly late in paying rent.*

- [12] Further, subsections 51.(4), 60.(5) and 61.(6) of the *Act* state:

51.(4) Landlord's right to possession restricted

A landlord shall not regain possession of a rental unit unless

- ...
- (b) *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.*

60.(5) Tenant presumed to accept notice

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.*

61.(6) Tenant presumed to accept notice

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

- [13] The Officer finds that after reviewing the documentary evidence, and the testimony provided by the parties that the Notice was properly served on the Tenants by e-mail on September 7, 2023. Further, the Officer finds that the documentary evidence, and undisputed testimony of S.W. establishes that the Tenant (L.L.) did not pay the outstanding rent within ten (10) days of receiving the Notice, and the Tenants did not file a *Section 75 Application* (Form 2A) with the Rental Office within ten (10) days of receiving the Notice. Therefore, the Tenants are deemed to have accepted the Notice pursuant to subsections 60.(5) and 61.(6) of the *Act*.
- [14] Further, the Officer finds that the Landlord has established valid grounds for terminating the tenancy agreement pursuant to subsections 60.(1) and 61.(1)(b) of the *Act*. The Officer further finds that the Tenant (K.S.) is not disputing the termination of their tenancy agreement with the Landlord and K.S., accepts the termination of their tenancy agreement.
- [15] The Officer finds that the Landlord has provided sufficient evidence, both documentary and through testimony to establish its claim that the Tenant (L.L.) owes \$1,000.00 in outstanding rent for September 2023. The Officer finds the Application is allowed, and the Notice is valid.
- [16] Pursuant to sub-subsections 85.(1)(b) and (f) of the *Act*, which state:
- 85. Powers of the Director**
(1) *After hearing an application, the Director may make an order*
(b) *directing payment or repayment of money from a landlord to a tenant or from a tenant to a landlord; and*
(f) *directing a tenant to vacate the rental unit on a specified date.*
- [17] The Officer finds that the tenancy agreements shall terminate effective 5:00 p.m. on October 26, 2023. The Tenant (L.L.) shall vacate the Residential Property by this time and date.
- [18] Further, the Officer finds that the Tenant (L.L.) shall pay the Landlord \$1,000.00 forthwith. The Officer notes that the Tenant (L.L.) also has rental arrears for October 2023. This amount was not sought in the Application, however, the Officer notes that the Tenant is required to pay the arrears for October 2023. Failure to pay the outstanding arrears may result in the Landlord seeking an application to retain the security deposit for the outstanding arrears.

Conclusion

- [19] The Notice is valid and the Application is allowed.
- [20] The tenancy agreements between the parties shall terminate effective **5:00 p.m. on October 26, 2023**. The Tenant (L.L.) shall vacate the Residential Property by this time and date.
- [21] The Tenant (L.L.) shall pay the Landlord \$1,000.00 forthwith for outstanding rent for September 2023.
- [22] The Tenant (L.L.) is responsible to pay the outstanding arrears for October 2023.
- [23] **Order LD23-490 was served on the parties by e-mail on October 19, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective **5:00 p.m. on October 26, 2023**. The Tenant (L.L.) shall vacate the Residential Property by this time and date.
- B. The Tenant (L.L.) shall pay the Landlord \$1,000.00 forthwith.
- C. A certified copy of Order LD23-490 may be filed in the Supreme Court and enforced by Sherriff Serviced as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 19th day of October, 2023.

(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 **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.