

Introduction

- [1] On October 3, 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:

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

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 an Eviction Notice (Form 4A) dated September 5, 2023, effective September 10, 2023, (the "Notice"). The Notice was served on the Tenant in person on September 5, 2023, for the following reasons:

You have not paid your rent in the amount of \$2,750.00.

You have not paid the security deposit.

You are repeatedly late in paying rent.

You or someone you have allowed on the property have disturbed or endangered others.

- [3] On October 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and the Tenant participated. All documents were properly served on the parties.

Issues to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?
- ii. Does the Tenant owe the Landlord rent?

Summary of the Evidence

- [4] In July of 2020 the Landlord and the Tenant entered into a verbal month-to-month tenancy agreement for the Residential Property. The Residential Property consists of half of a duplex. Rent is \$1,375.00 per month due on the first day of the month. The Landlord stated only \$250.00 of a required \$900.00 security deposit was paid.

Landlord's Evidence and Submissions

- [5] The Landlord stated the Tenant owes outstanding rent totaling \$3,786.00. The Landlord stated she owes \$136.00 for June 2023, \$1,000.00 for August 2023, \$1,375.00 for September 2023, and \$1,275.00 for October 2023. The Landlord provided a copy of a hand-written document into evidence showing the breakdown of the current rent owing.
- [6] The Landlord stated the Tenant only paid \$250.00 of the required \$900.00 security deposit on September 1, 2020, and the Tenant still owes \$650.00. The Tenant was served with an eviction notice on September 28, 2022, for non-payment of the security deposit and for with other reasons. He stated that eviction notice was rescinded but the security deposit is still outstanding. A copy of that eviction notice was submitted into evidence.
- [7] The Landlord stated the Tenant has been repeatedly late in paying rent. The Tenant was served with eviction notices for non-payment of rent owing for September 2022, April 2023, and May 2023. The Tenant was also late in June 2023 and only \$100.00 has been paid for October 2023. The Landlord submitted the eviction notices and text messages between the parties into evidence.

- [8] The Landlord stated the Tenant's brother ("S.W.") is not allowed at the Residential Property because of past issues. In February 2022 and twice in the summer of 2023 S.W. was at the property and police were called as a result. S.W. was issued with a fine for trespassing.
- [9] The Landlord agreed to allow the Tenant to stay in the rental unit until November 1, 2023.

Tenant's Evidence and Submissions

- [10] The Tenant does not dispute that she owes the amount of rent as stated by the Landlord or that she has been late in paying rent in the past. She stated she had personal issues recently which caused her to fall behind on her rent. The Tenant stated she has found another place to live and will vacate the rental unit by November 1, 2023.
- [11] The Tenant stated she does not allow S.W. at the Residential Property and has called police anytime S.W. shows up. She stated this past summer S.W. showed up uninvited and police were called.
- [12] The Tenant stated she thought she had paid the remainder of the security deposit when she had fallen behind on rent in 2022 and received an eviction notice. She stated that she thought the security deposit was a part of rent owing calculations she had received from the Landlord at that time and she had paid all that rent owing.

Analysis

- [13] The Officer begins by referencing the relevant law for the Application. The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsections 60.(1), 61.(1)(a), (b), and (d) 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:*
- (a) *the tenant does not pay the security deposit within 10 days of the date it is required to be paid under the tenancy agreement.*
- (b) *the tenant is repeatedly late in paying rent.*
- (d) *the tenant or a person permitted on the residential property by the tenant has*
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
(iii) put the landlord's property at significant risk.

- [14] 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.(4) 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.

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.

[15] The Officer finds that after reviewing the documentary evidence and the testimony provided by the parties that the Notice was properly served on the Tenant on September 5, 2023. Further, the Officer finds that the Tenant did not pay the outstanding rent within ten (10) days of receiving the Notice, and the Tenant did not file a *Section 75 Application* (Form 2A) with the Rental Office within ten (10) days of receiving the Notice. Therefore, the Tenant is deemed to have accepted the Notice pursuant to subsections 60.(5) and 61.(6) of the Act.

[16] 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 is not disputing the termination of their tenancy agreement with the Landlord and accepts the termination of their tenancy agreement.

[17] The Officer finds that the Landlord has provided sufficient evidence, both documentary and through testimony to establish his claim that the Tenant owes \$3,786.00 in outstanding rent. The Officer finds the Application is allowed, and the Notice is valid.

[18] Sub-subsections 85.(1)(b) and (f) of the Act 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.*

- [19] The Officer finds that the tenancy agreement shall terminate effective 5:00 p.m. on November 1, 2023. The Tenant shall vacate the Residential Property by this time and date.
- [20] Further, the Officer finds that the Tenant shall pay the Landlord \$3,786.00 on or before December 1, 2023.
- [21] With regards to the Landlords other reasons for termination of the tenancy agreement, the Officer finds that the Landlord has not established that the Tenant has breached subsections 61.(1)(a) or (d) of the Act. The Officer notes the Landlord had not provided any receipts or documentary evidence with regards to the security deposit. Furthermore, the Landlord has not established that the Tenant "permitted" S.W. on the property. The Officer also notes that there is nothing in the Act which allows the Director to order a tenant to pay an outstanding balance of a security deposit to a landlord.

Conclusion

- [22] The Notice is valid and the Application is allowed.
- [23] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on November 1, 2023. The Tenant shall vacate the Residential Property by this time and date.
- [24] The Tenant shall pay the Landlord \$3,786.00 on or before December 1, 2023.
- [25] Order LD23-493 was served on the parties by email on October 20, 2023.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on November 1, 2023. The Tenant shall vacate the Residential Property by this time and date.
- B. The Tenant shall pay the Landlord \$3,786.00 on or before December 1, 2023.
- C. A certified copy of Order LD23-493 may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, this 20th day of October, 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.