

Introduction

[1] On October 12, 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 a Landlord Notice of Termination pursuant to sub-subsection 60.(4)(b) of the *Act*.

[2] Attached to the Application was a Landlord Notice of Termination (Form 4A) dated October 3, 2023, effective October 23, 2023, (the "Notice"). The Notice was served on the Tenant for the following reason:

You have not paid your rent in the amount of \$700.00.

[3] On October 3, 2023, the Landlord served the Notice on the Tenant by email.

[4] On October 24, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and a representative for the Landlord ("C.C") participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

[5] On July 1, 2023, the Tenant and a co-tenant ("A.K."), and the Landlord entered a written one-year fixed-term tenancy agreement for the Residential Property. The Residential Property is a single unit in a 41-unit apartment building. Rent is \$1,400.00 per month, due on the first of each month. A security deposit of \$1,400.00 was paid.

Landlord's Evidence

[6] C.C. testified that the Tenant originally signed a different tenancy agreement for the same rental unit with a different co-tenant ("S.J.R."), dated January 16, 2023. The Landlord submitted a copy of this tenancy agreement into evidence. C.C. testified that S.J.R. later vacated the Residential Property, and the Tenant found A.K. to be a replacement roommate. C.C. testified that she was quick to review A.K.'s information and granted permission for her to become a co-tenant.

[7] C.C. testified that on July 1, 2023, the Tenant signed a new tenancy agreement jointly with A.K. C.C. testified that A.K. permitted family members to live permanently in the rental unit, contrary to the tenancy agreement. A.K. and her family members were then evicted. C.C. testified that when A.K. vacated the Residential Property, the Landlord returned \$700.00 of the security deposit to A.K.

[8] The Landlord submitted that the Tenant and A.K. signed the tenancy agreement jointly as a single agreement. Therefore, the Tenant is responsible for paying the entirety of the rent owing until a new co-tenant is chosen and approved. C.C. argued that it is the responsibility of the Tenant to find a replacement roommate. C.C. testified that the Landlord always rents the entirety of the rental units in single tenancy agreements, rather than renting rooms to individuals. The Landlord submitted a copy of the tenancy agreement into evidence which showed the Tenant and A.K. being co-tenants with monthly rent in the amount of \$1,400.00.

[9] C.C. testified that she has been very cooperative and supportive of the Tenant's efforts to find a roommate to replace A.K., just like she was when S.J.R. moved out and A.K. was quickly permitted to move in. C.C. argued that the same circumstances apply here, and it is up to the Tenant to find a new roommate.

- [10] The Landlord further submitted extensive copies of text message exchanges with the Tenant which touched on a variety of subjects, including subleasing and rent owing.

Tenant's Evidence

- [11] The Tenant argued that he should not be required to pay the entirety of the \$1,400.00 rent because A.K. was evicted from the Residential Property. The Tenant testified that he paid his portion of the rent, but he is not responsible for paying for the remaining \$700.00 which A.K. would have paid.
- [12] The Tenant testified that A.K. had allowed family members to move into the Residential Property, contrary to the tenancy agreement. As a result, A.K. and her family members were evicted. The Tenant argued that this was the Landlord's decision and he should not be held responsible for paying A.K.'s portion of the rent as a result.
- [13] The Tenant testified that he has made extensive efforts to find a roommate to replace A.K., but has been unsuccessful thus far.

Analysis

- [14] The Landlord's reason for terminating the tenancy agreement is pursuant to subsection 60.(1) of the *Act*, which states:

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.*

- [15] The Officer further notes the application of subsection 19.(1) of the *Act*, which states:

19. Tenant shall pay rent when due

- (1) *A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.*

- [16] The Officer notes that in matters where there is a dispute over a Notice of Termination by the Landlord, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice.
- [17] Based on the totality of the evidence provided, the Officer finds that the Landlord has established a valid basis to terminate the tenancy agreement due to the Tenant's non-payment of rent, pursuant to subsection 60.(1) of the *Act*. The Officer finds that the Tenant only paid \$700.00 of the \$1,400.00 rent due for the month of October 2023 because he said that was his portion of the rent.
- [18] The Officer notes that the Tenant and A.K. signed a single joint tenancy agreement for the rental unit with a stated monthly rent of \$1,400.00. The Officer notes that the Tenant and A.K. were jointly and severally liable for payment of rent under the tenancy agreement. The Officer notes that following A.K.'s eviction, the Tenant, as the sole remaining tenant was required to pay the full amount of rent owing. The Officer further notes that the Tenant was entitled to find another co-tenant to help pay for rent, as was done previously when A.K. replaced a prior co-tenant who vacated the rental unit, but the Tenant did not find a replacement co-tenant.

[19] The Officer notes that pursuant to section 19.(1) of the *Act* stated above, tenants shall pay rent when due, unless tenants have express permission to withhold rent under the *Act*. The Officer comments that tenants who dispute the amount of rent owing to landlords may pay the entirety of the disputed amount and make an application with the Rental Office for a return of rent from landlords using a Form 2A Tenant Application to Determine Dispute.

[20] The Officer finds that the Notice is valid and the Application is denied.

Conclusion

[21] The Notice is valid and the Application is denied.

[22] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on November 8, 2023. The Tenants and all occupants shall vacate the Residential Property by this time and date.

[23] **Order LD23-501 was served on the parties by e-mail on November 1, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Notice is valid and the Application is denied.
- B. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on November 8, 2023. The Tenants and all occupants shall vacate the Residential Property by this time and date.
- A. A certified copy of Order LD23-501 may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 1st day of November, 2023.

(sgd.) Colin Trewin

Colin Trewin
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.