

## 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 notice of termination pursuant to subsection 61.(5) of the *Act*.
- [2] Attached with the Application was an *Eviction Notice* (Form 4A) (the “Notice”) dated October 2, 2023 effective November 30, 2023. The Notice was given to the Tenant for the following reason:
- You are repeatedly late in paying rent.*
- [3] All documents were properly served to the parties in accordance with subsection 100.(1) of the *Act*.
- [4] On November 2, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant appeared, representing themselves. The Representative appeared, representing the Landlord.

## Issue to be Decided

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

## Summary of the Evidence

- [5] On or around December 2017 the Tenant and former landlord entered into a written fixed term tenancy agreement for the Residential Property. The Landlord purchased the Residential Property in November 2018. The tenancy agreement continued and the parties renewed the fixed term each year from January to December. Rent is \$1,274.00 due on the first day of the month. A security deposit of \$1,050.00 was required and paid.

### Landlord’s Evidence and Submissions

- [6] The Landlord submitted into evidence copies of written notices and warnings to the Tenant over the past three years, a timeline of rent paid from December 1, 2019 to present, and four eviction notices.
- [7] The Representative testified that since December 2019 the Tenant repeatedly paid rent late. The Representative testified that the evidence demonstrates that the Tenant is regularly late paying the rent and that the Landlord has demonstrated a concern that rent be paid on time. The Representative testified that he had a conversation with the property manager, where the property manager denied the characterization of the conversation described in the Tenant’s evidence.
- [8] The Representative testified that the Landlord has provided numerous warnings and evictions to the Tenant, which are not required by law. The Representative testified that the Rental Office has upheld similar evictions in the past. The Representative disputed the Tenant’s arguments and submissions as it relates to relevant factors to consider for terminating the tenancy agreement for repeatedly late payment of rent. The Representative testified that he is open to extending the Tenant’s vacate date to provide more opportunity to find new living arrangements.

### Tenant’s Evidence and Submissions

- [9] The Tenant submitted into evidence two letters received by the Landlord. The Tenant testified that he cannot dispute the evidence that he is repeatedly late paying rent. The Tenant testified that in May 2023 he lost his job, which put him behind financially. The Tenant testified that he had a conversation with the property manager regarding potentially being late with rent. The Tenant characterized the conversation with the property manager as the late payment of rent was not a big deal because the intention of the Representative was to move into the Residential Property.

- [10] The Tenant testified that he is seeking leniency, and time to find a new living arrangement. The Tenant admitted to not having paid November 2023 rent, but has the money to pay. The Tenant testified that he is trying to find a new place, but due to the market, there is nothing affordable. The Tenant testified that he is starting a new job and that he will be able to pay December rent on time.
- [11] The Tenant testified that the Representative intends to move into the Residential Property and rather than provide the additional notice period and compensation he is attempting to evict using this reason.

## Analysis

- [12] The Officer begins by referencing the relevant law for the Application. The Landlord's reason for terminating the tenancy agreement is pursuant to subsection 61.(1)(b) of the *Act*, which states:

### **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.*

- [13] The Officer makes comment that in such matters where there is a dispute over an *Eviction Notice*, it is the landlord's burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice.
- [14] In this case, the Landlord seeks to terminate the tenancy agreement because the Tenant is repeatedly late paying rent.
- [15] The Officer finds that the undisputed testimony of the parties, and the evidence presented by the Landlord establishes that the Tenant is repeatedly late paying rent. Therefore, the Officer finds that there is sufficient evidence to establish that the Tenant breached subsection 61.(1)(b) of the *Act*, and warrants a termination of the tenancy agreement.
- [16] Further, the Officer notes that the Island Regulatory and Appeals Commission, most recently, has provided greater clarity around evictions for repeatedly late payments of rent, which *all landlords and tenants* should be familiar with in Order LR23-66, paragraph [17], which states:

[17] *The Commission notes that the Act provides that a Landlord may, under section 61(1)(b), evict a tenant who is repeatedly late paying rent. It is therefore in the Landlord's discretion whether to evict and so long as the Landlord proves that the Tenant was repeatedly late in paying rent, and that the Notice was served, then the eviction will stand. **While a landlord may seemingly tolerate late payment for some time, the Act permits an eviction based on repeated late payment of rent and no warning is required.** [emphasis added]*

- [17] The Officer finds that the Notice is valid and the Application is denied. However, the Officer has the discretion to extend or reduce any notice period pursuant to subsection 85.(1)(f) and (n) of the *Act* states:

### **85. Powers of the Director**

- (1) *After hearing an application, the Director may make an order*
- (f) *Directing a tenant to vacate the rental unit on a specified date.*
- (n) *extending or reducing any notice period under in this Act.*

- [18] During the hearing, the parties provided submissions regarding the appropriateness to extend the vacate date. The Officer notes his initial concerns that November 2023 rent has yet to be paid. Such a fact would generally dissuade the Officer from exercising such discretion and leniency. However, given the totality of the fact, the leniency conveyed by the Representative, and that the Tenant provided testimony that he does have November 2023 rent available, the Officer finds it justifiable to provide additional time to the Tenant and to extend the tenancy.

### Conclusion

- [19] The Notice is valid and the Application is denied.
- [20] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on December 31, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- [21] The Tenant is responsible to pay November 2023 rent, and to pay December 2023 rent on time.
- [22] **Order LD23-506 was served on the parties by email on November 3, 2023.**

### IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on December 31, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- B. The Tenant is responsible to pay November 2023 rent in full, and December 2023 rent in full and on time.
- C. A certified copy of Order LD23-506 may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

**DATED** at Charlottetown, Prince Edward Island, this 3rd day of November, 2023.

(sgd.) Cody Burke  
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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.