

Introduction

- [1] On October 27, 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 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 20, 2023, effective October 20, 2023, (the "First Notice"). The First Notice was served on September 20, 2023, for the following reasons:

*You have permitted an unreasonable number of occupants in the rental unit; and
You or someone you have allowed on the property have engaged in illegal activity on the property.*

- [3] Attached to the Application was an Eviction Notice (Form 4A) dated October 6, 2023, effective October 26, 2023, (the "Second Notice"). The Second Notice was served on October 6, 2023, for the following reason:

You have not paid your rent in the amount of \$950.00.

- [4] On November 7, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and the Tenant participated.

- [5] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the Act.

Issue to be Decided

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

Summary of the Evidence

- [6] In December of 2021 the Landlord and the Tenant entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property consists of one half of a duplex. Rent is \$950.00 due on the first day of the month. A security deposit of \$600.00 was paid.

Landlord's Evidence and Submissions

- [7] The Landlord submitted 12 pages of documentary evidence, including copies of the Notices which had been served on the Tenant, a rental ledger, and a letter from Charlottetown Police Services.

- [8] The Landlord stated the Tenant owes rent for October 2023 in the amount of \$950.00. He stated rent for November 2023 has yet to be paid and the rental ledger showed rent had only been paid up until September 2023.

- [9] The Landlord stated on September 20, 2023, police attended the Residential Property and broke in the front door. He stated individuals were arrested at the Residential Property at that time. The Landlord stated the letter from police shows that on September 20, 2023, police were dispatched to the Residential Property for a Possession for the Purpose of Trafficking complaint. The Landlord stated he issued an eviction notice to the Tenant on this same date because of the incident with police.

Tenant's Evidence and Submissions

- [10] The Tenant did not submit any evidence prior to the hearing. The Tenant did not dispute that rent for October or November 2023 had not been paid. The Tenant stated she thought she was being evicted so she withheld the rent. She stated the police broke the front door of the Residential Property because of a search warrant. She stated the search warrant was for two individuals who were staying with her and it had nothing to do with her.

Analysis

- [11] The Officer begins by referencing the relevant law for the Application. The *Act* states:

Tenant shall pay rent when due

19. (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.*

Landlord's right to possession restricted

51.(4) *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.*

Landlord's notice for non-payment of rent

60.(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.*

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.*

Tenant presumed to accept notice

60.(5) *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.*

[12] Section 61.(1)(a) and (e) of the *Act* states:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(a) there is an unreasonable number of occupants in the tenant's rental unit;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant.

[13] Based on the totality of the evidence, the Officer finds that the Notices were properly served on the Tenant. Further, the Tenant did not file a '*Section 75 Application*' (Form 2A) with the Rental Office within 10 days of receiving the Notices. Therefore, the Tenant is deemed to have accepted the Notices pursuant to subsection 60.(5) of the *Act* and the Landlord has established valid grounds for terminating the tenancy agreement. The Officer also finds that the Landlord has established a valid basis for terminating the tenancy agreement due to non-payment of rent in the amount of \$950.00 for October 2023.

[14] The Officer further finds that the Landlord has established that the Tenant has breached subsection 61.(1)(e) of the *Act*. The Officer finds that the Landlord has provided sufficient evidence, specifically the testimony provided by the parties as well as the documentary evidence from the Charlottetown Police Services. However, the Officer does not find that the Landlord has provided sufficient evidence to establish that the Tenant has breached subsection 61.(1)(a) of the *Act*.

[15] Subsection 85.(1)(f) of the *Act* states:

After hearing an application, the Director may make an order

Directing a tenant to vacate the rental unit on a specified date.

Conclusion

[16] The First Notice and Second Notice are valid and the Application is allowed.

[17] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on November 20, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.

[18] Order LD23-521 was served on the parties by email on November 9, 2023.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on November 20, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- B. A certified copy of Order LD23-521 may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 9th day of November, 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.