

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 an eviction notice 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 October 23, 2023. The Notice was given to the Tenant for the following reasons:
- You are repeatedly late in paying rent.*
You have not paid your rent in the amount of \$1000.
- [3] All documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with subsection 100.(1) of the *Act*.
- [4] On November 9, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Representative appeared, on behalf of the Tenant, along with legal counsel. The Landlord appeared, representing themselves.

Issue to be Decided

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

Summary of the Evidence

- [5] On February 1, 2021 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property that converted to a month-to-month agreement. Rent is \$1,000.00 due on the first day of the month. A security deposit was not required.

Landlord's Evidence and Submissions

- [6] The Landlord submitted into evidence numerous documents into evidence which include: a written submission, screenshots of conversations between the parties, e-transfers, and additional documents in reference to ownership of title and other legal documents.
- [7] The Landlord testified that on October 2, 2023 she gave the Tenant the Notice due to non-payment of October's rent and also repeatedly late paying rent. The Landlord admitted that on October 3, 2023 the Tenant paid October's rent in the amount of \$1,000.00.
- [8] The Landlord testified that the Tenant has been late three times with paying rent. The Landlord testified that in December 2022 she did not receive rent from the Tenant. The Landlord testified that she received an e-transfer from the Representative, however, the Representative is not the Tenant. The Landlord testified that there were issues with the password when attempting to accept the e-transfer, and that it was not until December 27, 2022 when the Representative reached out to the Landlord to clarify why the rent was sent from a different e-mail address.
- [9] The Landlord testified that the Tenant was late paying rent in August 2023. The Landlord testified that she served an eviction notice for non-payment of rent and on August 10, 2023 the Tenant paid the rent. The Landlord testified that the Tenant was late paying rent in October 2023. The Landlord testified that she served the Notice as a result. The Landlord testified that this is a pattern of lateness and she wishes to terminate the tenancy agreement.

Tenant's Evidence and Submissions

- [10] The Tenant submitted 9-pages of documents into evidence which includes text message conversations and screenshots of e-transfers.

- [11] The Tenant's submissions are summarized through the Representative and their legal counsel. It was argued that much of the Landlord's documentary evidence is irrelevant to the issue of repeatedly late paying rent. The Representative denied December 2022 rent being late. The Representative testified that she took over as power of attorney for the Tenant and sent the e-transfer for December 2022 rent on December 1, 2022. The Representative argued it was not late and admitted to not communicating with the Landlord that she would be handling all the financials for the Tenant. The Representative testified that she did not know that the Landlord never accepted the e-transfer. The Representative admitted that August 2023 rent was late due to uncertainty and an ongoing dispute with the Landlord before the Island Regulatory and Appeals Commission. The Representative admitted that October 2023 rent was late due to illness and a mistake. However, both August and October rent were paid within the ten days of receiving the eviction notice and the Notice.
- [12] Legal counsel argued that being late only two months does not justify termination of the tenancy agreement and December 2022 was not late.

Analysis

- [13] 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.

- [14] 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.
- [15] In this case, the Landlord seeks to terminate the tenancy agreement because the Tenant is repeatedly late paying rent. The Officer finds that the non-payment of rent part of the Notice was invalidated once the rent was paid on October 3, 2023.
- [16] The Officer finds that the disputed testimony of the parties, and evidence presented by the Landlord does not establish that the Tenant is repeatedly late paying rent. Therefore, the Officer finds that there is insufficient evidence to conclude that the Tenant breached subsection 61.(1)(b) of the *Act*, which would warrant a termination of the tenancy agreement.
- [17] The Officer finds that the evidence does not suggest that the Tenant was late paying rent in December 2022. The Officer finds the Tenant was late paying August and October 2023 rent. That is two late payments in the last four months. The Officer finds that such a set of facts does not amount to "repeatedly" being late paying rent. The Landlord would have to establish that the Tenant was late paying rent in at least three times in consecutive months or over a short period of time.

[18] 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]*

[19] Therefore, the Officer finds that the Notice is invalid and the Application is allowed. The tenancy agreement shall continue in full force and effect.

Conclusion

[20] The Notice is invalid and the Application is allowed.

[21] The tenancy agreement shall continue in full force and effect.

[22] **Order LD23-528 will be served on the parties by e-mail on November 15, 2023.**

IT IS THEREFORE ORDERED THAT

A. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 15th day of November, 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 **20** 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.