

Introduction

- [1] On October 26, 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 vacant possession of the rental unit and ordering the Sheriff to put the Landlord into possession of the unit.
- [2] Attached to the Application were two *Eviction Notices* (Form 4As) dated October 5, 2023 effective October 15, 2023 and November 30, 2023, respectively (the "Notices"). The Notices were given to the Tenants for the following reasons:
- You have not paid your rent in the amount of \$1,250.00;*
You have not paid the security deposit; and
You or someone you have allowed on the property have disturbed or endangered others.
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [4] On November 16, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Representative appeared, representing the Landlord. The Tenant appeared, representing the Tenants.

Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notices?

Summary of the Evidence

- [5] There is a dispute of facts between the parties as it relates to the nature of the tenancy. The parties agreed that the intent was that the parties would sign and enter into a written fixed term agreement, which would begin October 1, 2023. Rent was to be \$1,250.00 due on the first day of the month and security deposit valued at \$1,250.00 was required. However, the parties dispute the remaining facts leading up to whether or not there is a tenancy agreement, when the agreement was to begin and if October 2023 rent and the security deposit are considered paid.

Landlord's Evidence and Submissions

- [6] The Landlord submitted 26-pages of documentary evidence, including written submissions, copies of conversations between the parties, screenshots of an e-transfer cancellation, and photographs. The Representative's testimony is summarized as follows.
- [7] The Representative testified that on or around August 22, 2023 the Tenants viewed the Residential Property with the former tenant and he arrived at the Residential Property shortly thereafter. The Representative testified that during the conversation with the Tenants, the parties agreed that the Tenants would clean and do minor repairs on the Residential Property after the former tenant vacated. The Representative testified that that he only told the Tenants that he would pay them for the work, and denied any mention of the security deposit and the rent.
- [8] The Representative testified that he went on vacation in September 2023, provided the Tenants with the contact information for the former tenant and did not hear from the Tenants again. The Representative testified that he returned to the Residential Property on or around October 3, 2023 where he found the Tenants living in the Residential Property. The Representative testified that he was not satisfied with the situation, and that the Tenants did not pay him any money for October 2023 rent and the security deposit. The Representative testified that November 2023 rent also was not paid and that the Tenants cancelled the e-transfer.

- [9] The Representative testified that the Tenants entered the Residential Property without informing him and also have not signed any agreement. The Representative denied the Tenant's testimony (see below) regarding the characterization of the conversations between the parties. The Representative testified that the relationship has soured and does not have any interest in continuing the relationship with the Tenants. The Representative testified that he posted the Notices on the door of the Residential Property.

Tenants' Evidence and Submissions

- [10] The Tenants submitted numerous documents into evidence which includes: written submissions, photographs of the Residential Property, an ad the Tenants put on Facebook, screenshots of conversations between the parties, missed calls to the Representative, and additional screenshots of expenses incurred from repairing and cleaning the Residential Property.
- [11] The Tenant testified that on August 22, 2023 she first viewed the Residential Property with the former tenant, as the Representative was running late. The Tenant testified that the conversation with the Representative led to the parties agreeing that the Tenants would clean and do minor repairs to the Residential Property as its condition was quite poor. The Tenant testified that the Representative agreed that the work would be in lieu of payment for the security deposit (\$1,250.00). The Tenant testified that she was given the former tenant's contact information. The Tenant testified that the former tenant vacated on September 25, 2023 and she inspected the Residential Property soon after. The Tenant testified that she attempted to call the Representative on numerous occasions with no answer. The Tenant testified that she wanted to inform the Representative that she would to begin cleaning and repairing the Residential Property, while beginning to move in some personal items. The Tenant testified that she also wanted to know how to pay October 2023 rent.
- [12] The Tenant testified that when the Representative arrived to the Residential Property she informed him that the work to the Residential Property was going to be a lot more than expected. The Tenant testified that the Landlord agreed to waive October 2023 rent in lieu of the work required to clean and repair the Residential Property. The Tenant testified that the Representative said: "*We will figure it out.*" The Tenant testified that she took that to mean rent payment was not the priority at that time on October 3, 2023.
- [13] The Tenant provided additional testimony in response to part of the Representative's testimony regarding events that resulted in an argument between the parties. Additionally, the Tenant testified that the Representative knew she had dogs as the dogs were part of her Facebook Ad., and that the former tenant had dogs.

Analysis

- [14] The Officer begins by referencing the relevant law for the Application. The Landlord's reasons for terminating the tenancy agreement are pursuant to clauses 60.(1), 61.(1)(a), 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;
- (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.

[15] Further, clauses 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.(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.

[16] The Officer finds that the Notices were properly served on the Tenants on October 5, 2023. The Officer finds that the Tenants did not pay the outstanding rent within ten (10) days of receiving the Notices, and the Tenants did not file a *Section 75 Application* (Form 2A) with the Rental Office within ten (10) days of receiving the Notice. As a result, the Tenants are deemed to have accepted the Notices pursuant to subsections 60.(5) and 61.(6) of the Act.

[17] Further, the Officer finds that the parties provided contradictory evidence and testimony as it relates to the conversation between the parties on August 22, 2023 and October 3, 2023. The parties presented different characterizations as it relates to an oral conversation about cleaning and repairs in lieu of the security deposit and then rent.

- [18] The Officer finds that in such circumstances, it is the person alleging the waiver of rent and/or the security deposit to prove their claim with sufficiently clear, convincing and cogent evidence. The Officer finds that the Tenants have not provided such evidence to prove their testimony. The Officer finds that the Tenants may have understood the arrangement different, however, on October 5, 2023, the Tenants knew or ought to have known that the Landlord's position either changed, or was clearly made that the Landlord wanted the rent and security deposit. It was the Tenants' responsibility once they received the Notices to either pay the full amount and/or file an application with the Rental Office to dispute the claims of the Landlord. The Tenants did neither.
- [19] The Landlord has established valid grounds for terminating the tenancy agreement due to not paying the rent and the security deposit. The Officer finds that the Landlord has not provided valid grounds to terminate under subsection 61.(1)(d) of the *Act*, however. Further, the Officer notes that the Landlord added additional reasons for terminating: *(n) No agreement on dogs, no agreement of moving in*. The Officer finds that a landlord cannot write in additional reasons for terminating the tenancy agreement. The Application is allowed and the Notices are valid.
- [20] The tenancy agreement shall terminate effective 5:00 p.m. on November 30, 2023. The Tenants and all occupants shall vacate the Residential Property by this time and date.

Conclusion

- [21] The Notice is valid and the Application is allowed.
- [22] The tenancy agreement between the parties shall terminate effective **5:00 p.m. on November 30, 2023**. The Tenants and all occupants shall vacate the Residential Property at this time and date.
- [23] **Order LD23-539 will be served on the parties by e-mail on November 20, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective **5:00 p.m. on November 30, 2023**. The Tenants and all occupants shall vacate the Residential Property by this time and date.
- B. A certified copy of Order LD23-539 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 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 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.