

## Introduction

- [1] On October 27, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2B) (the “Landlord’s Application”) with the Residential Tenancy Office (the “Rental Office”). The Landlord’s Application is seeking vacant possession of the rental unit and requesting the Sheriff to put the Landlord into possession of the unit.
- [2] Attached to the Landlord’s Application was an *Eviction Notice* (Form 4A) dated October 7, 2023 effective October 27, 2023 (the “Notice”). The Notice was given to the Tenant for the following two reasons:
- You have not paid your rent in the amount of \$1,700.00;*  
*You have not paid the security deposit.*
- [3] On November 1, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2A) (the “Tenant’s Application”) with the Rental Office. The Tenant’s Application is seeking a determination that the Landlord contravened the *Act*, an adjustment in rent and a return of rent.
- [4] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [5] On November 14, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant appeared, representing themselves. The Landlord appeared, representing themselves.

## Issues to be Decided

- i. Has the Landlord contravened the *Act*? If so, is the Tenant entitled to a return of rent and/or reduction in rent?
- ii. Does the Tenant have to vacate the Residential Property due to the Notice?

## Summary of the Evidence

- [6] On December 1, 2022 the parties entered into a written fixed term tenancy agreement for the rental unit. Rent is \$1,700.00 due on the first day of the month. A security deposit of \$1,000.00 was required but was not paid.

### Landlord’s Evidence and Submissions

- [7] The Landlord did not submit any documentary evidence. However, the Landlord did provide oral testimony at the hearing for both applications.
- [8] The Landlord testified that the Tenant has not paid rent for the months of October and November 2023. The Landlord testified that the Tenant has not paid the security deposit in the amount of \$1,000.00. The Landlord testified that throughout the tenancy he requested the security deposit be paid.
- [9] The Landlord testified that the Residential Property is dealing with a cockroach infestation, which the Tenant brought to his attention. The Landlord testified that he provided spray to the Tenant, but it did not work. The Landlord testified that he contacted different pest control companies, and one did not want to do the work due to the condition of the rental unit. The Landlord testified that the Residential Property received two sprays since the early summer. The Landlord testified that after the second spray, the Tenant did not complain about the cockroach issue.

- [10] The Landlord testified that the rental unit is dirty and that the Tenant is not keeping the rental unit clean. The Landlord testified that the condition of the rental unit is causing the cockroach infestation to continue.

### **Tenant's Evidence and Submissions**

- [11] The Tenant submitted documentary evidence which includes an Environmental Health Report dated October 13, 2023, text message conversations between the parties, and photographs of cockroaches.
- [12] The Tenant testified that at the beginning of the tenancy, the John Howard's Society was going to assist him with paying the security deposit. The Tenant testified that the representative was unable to contact the Landlord, and payment was never made. The Tenant testified that he was unable to pay the security deposit due to financial hardship.
- [13] The Tenant testified that the Residential Property has many issues, including an on-going cockroach infestation. The Tenant testified that he noticed cockroaches when he first moved into the rental unit, and as the weather warmed the cockroach numbers increased. The Tenant testified that he informed the Landlord, but he has not taken the reasonable or the appropriate steps to remove the cockroach issue.
- [14] The Tenant admitted to not paying October 2023 and November 2023 rent. The Tenant testified that the cockroach issue has been going on for so long he attempted to motivate the Landlord to do more by withholding the rent. The Tenant testified that he will pay rent once the cockroach issue is resolved.
- [15] The Tenant testified that there were two sprays in the Residential Property, but the last spray was only a partial spray, which happened in August 2023. The Tenant testified that the Landlord has done nothing since the partial spray in August 2023, and that Environmental Health inspected the Residential Property on September 28, 2023.
- [16] The Tenant denied the Landlord's allegation that the rental unit is dirty, and/or is the cause for the cockroach infestation. The Tenant testified that he followed all the instructions from the pest control company and is actively cleaning the rental unit.

### **Analysis**

**Issue i.**            ***Has the Landlord contravened the Act? If so, is the Tenant entitled to a return of rent and/or reduction in rent?***

- [17] The Officer begins by referencing the relevant law for the Tenant's Application. Subsection 28.(1) of the *Act* states:

**28.    *Obligation to repair and maintain***

- (1).    *A landlord shall provide and maintain the residential property in a state of repair that*
- (a)    *complies with the health, safety and housing standards required by law;*
  - and*
  - (b)    *having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

[18] Further, the clause 9.(c) of the *Public Health Act Rental Accommodation Regulations* states:

**9. Maintenance of premises**

*The owner of any dwelling shall, when necessary*

...

(c) *take necessary precautions and undertake necessary treatment to prevent or eliminate infestations by cockroaches, bedbugs, fleas, silverfish, weevils, flies, rats, mice and any or all pests.*

[19] With regard to the Tenant's Application the Officer finds that the Tenant has established their claim that the Landlord has contravened clauses 28.(1) of the *Act* and 9.(c) of the *Public Health Act Rental Accommodation Regulations*. The Officer comes to this finding based on the Tenant's testimony as it relates to the timeline and the duration of the cockroach infestation, the Landlord's testimony as a response to the steps or actions taken, and the Environmental Health Report dated October 13, 2023. The Officer finds that the Landlord has not taken what the Officer would consider reasonable and/or consistent steps to remediate and/or eradicate the cockroach infestation. This responsibility is the sole duty of the Landlord pursuant to clauses 28.(1) of the *Act* and 9.(c) of the *Public Health Act Rental Accommodation Regulations*.

[20] Further, the Officer notes that the Landlord argued that the rental unit was not clean and that the Tenant's lack of effort to keep the rental unit clean was a result of the on-going cockroach infestation. The Officer finds that he is not compelled by the Landlord's argument. The Landlord did not provide any evidence to prove such a claim. As a result, the Officer finds that the Tenant's Application is allowed, in part.

[21] Therefore, the Officer finds that the Landlord shall take immediate steps to have a professional company begin and continue to remediate the Residential Property of the cockroach infestation. In addition, the Officer reduces the rent to ½ based on the Landlord's breach of the *Act*.

- The Tenant is only responsible for ½ of October 2023 rent in the amount of \$850.00; and
- The Tenant is only responsible for ½ of November 2023 rent in the amount of \$850.00.

**Issue ii. Does the Tenant have to vacate the Residential Property due to the Notice?**

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

**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;*

[23] 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.*

[24] The Officer notes that the Tenant argued that he did not pay October 2023 rent at the time due to the poor condition of the Residential Property. However, the Officer notes that subsection 19.(1) of the *Act* 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.*

[25] The Officer notes that the general rule is that a tenant cannot for any reason withhold rent. In this case, the undisputed testimony of the parties establishes that the Tenant did not pay rent for October and November 2023. Further, the undisputed testimony of the parties also establishes that the Tenant did not pay the required security deposit in the amount of \$1,000.00. Based on these findings, the Officer finds that the Landlord has established valid grounds for terminating the tenancy agreement.

[26] Further, the Officer finds that the Notice was properly served on the Tenant on October 7, 2023. The Officer finds that the Tenant did not pay the outstanding rent within ten (10) days of receiving the Notice and/or the Tenant 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 Tenant is deemed to have accepted the Notice pursuant to subsection 60.(5) and 61.(6) of the *Act*. The Landlord's Application is allowed and the Notice is valid.

[27] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on November 30, 2023. The Tenant shall vacate the Residential Property by this time and date.

**Conclusion**

- [28] The Tenant's Application is allowed, in part.
- [29] The Landlord shall take immediate steps to have a professional company begin and continue to remediate the Residential Property of the cockroach infestation.
- [30] The Tenant is only responsible to pay ½ of October 2023 rent in the amount of \$850.00.
- [31] The Tenant is only responsible to pay ½ of November 2023 rent in the amount of \$850.00.
- [32] The Landlord's Application is allowed, and the Notice is valid.
- [33] The tenancy agreement between the parties shall terminate effective **5:00 p.m. on November 30, 2023**. The Tenant shall vacate the Residential Property at this time and date.
- [34] **Order LD23-547 will be served on the parties by e-mail on November 24, 2023.**

**IT IS THEREFORE ORDERED THAT**

- A. The Landlord shall take immediate steps to have a professional company begin and continue to remediate the Residential Property of the cockroach infestation.
- B. The Tenant is only responsible to pay ½ of October 2023 rent in the amount of \$850.00.
- C. The Tenant is only responsible to pay ½ November 2023 rent in the amount of \$850.00.
- D. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on November 30, 2023. The Tenant shall vacate the Residential Property at this time and date.
- E. A certified copy of Order LD23-547 may be filed in the Supreme Court and enforced by Sherriff Services as permitted by the *Act*.

**DATED** at Charlottetown, Prince Edward Island, this 24th 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.