

## Introduction

- [1] On November 10, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks vacant possession of the Rental Unit and an order for the Sheriff to put the Landlord in possession, which is the subject of this decision. The Application also requests a monetary order against the Tenant for unpaid rent, which is the subject of Order LD23-551.
- [2] Attached to the Application was a *Notice of Termination by Lessor of Rental Agreement* (Form 4) served on September 3, 2023 for non-payment of rent, effective September 23, 2023 (the "Notice").
- [3] On November 17, 2023 the Rental Office emailed the Landlord notice of a teleconference hearing scheduled for 1:00 p.m. on November 23, 2023 for determination of the Application, for the Landlord to serve to the Tenant.
- [4] On November 23, 2023 the Landlord and the Tenant participated in a teleconference hearing with the Residential Tenancy Officer (the "Officer").

## Issue to be Decided

- i. Does the Tenant have to vacate the Rental Unit pursuant to the Notice?

## Summary of the Evidence

- [5] On September 26, 2022 the Landlord and the Tenant entered into a written tenancy agreement for the period of October 1, 2022 to September 30, 2023. Rent in the amount of \$1,000.00 is due on the first day of the month and a \$500.00 security deposit was paid. All rent payments were made by e-transfer.
- [6] The Rental Unit has two-bedrooms, one-bathroom and a basement, forming half of a duplex building that the Landlord has owned for 25 to 30 years.

## Landlord's Evidence

- [7] The Landlord's evidence is summarized as follows. The Landlord submitted into evidence a ledger recording rent payments by the Tenant from November 25, 2022 to October 6, 2023. The amount of rent owing as of September 3, 2023 was \$2,698.00 and the amount owing as of November 23, 2023 was \$3,598.00. The payment dates and amounts on the ledger were stated by the Officer at the hearing. The rent ledger will be attached as Appendix "A" to the copy of this Order provided to the Landlord and the Tenant.
- [8] With regard to the Tenant's evidence below about payment of outstanding rent, the Landlord stated that he spoke with the Tenant and gave her additional time to bring her rent up to date. However, the Tenant never caught up with her rent payments and he decided to file the Application to end the tenancy.

## Tenant's Evidence

- [9] The Tenant's evidence is summarized as follows. The Tenant was unsure of the exact amount of rent she owed at the time the Notice was served. However, the Tenant did not file an application disputing the Notice because she believed that the unpaid rent amount stated on the Notice was about right. The Tenant was also unsure of the exact amount of rent owed as of the hearing date but the amount stated by the Landlord sounded about right.

- [10] Near the beginning of the hearing the Tenant believed that she had made a rent payment to the Landlord after October 6, 2023. However, the Tenant checked her bank records during the hearing and confirmed there was no such payment.
- [11] The Tenant stated that about a week after she received the Notice she spoke with the Landlord about having more time to bring her rent up to date.
- [12] The Tenant stated that her name is spelled incorrectly in the tenancy agreement and the Tenant provided her full name at the hearing.

## Analysis

### Proper Termination Notice

- [13] The Landlord should have completed an *Eviction Notice (Form 4(A))* made pursuant to the *Act* (see subsection 53(f)). A blank copy of this form is attached to this decision, titled Appendix "B".
- [14] Instead, the Landlord used a *Notice of Termination by Lessor or Rental Agreement (Form 4)* prescribed by the *Rental of Residential Property Act Regulations*, EC10/89, which was repealed on April 8, 2023.
- [15] Although the Landlord used an incorrect form, the Officer finds that the form used does not invalidate the Notice. Section 30 of the *Interpretation Act* RSPEI 1988, I-8.1 states:

*Where an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if*

- (a) the deviations do not affect the substance;*
- (b) the deviations are not likely to mislead; and*
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.*

- [16] Evictions for non-payment of rent pursuant to section 60 of the current *Act* (in force starting April 8, 2023) are similar to evictions made pursuant to sections 13 and 16 of the repealed *Rental of Residential Property Act* RSPEI 1988, R-13.1. Both sections contain the following rules:
- a termination notice can be served the day after rent is due;
  - the notice can be invalidated by full payment of rent within ten days of service;
  - a tenant can file an application disputing the notice within ten days of service;
  - there is a minimum twenty-day vacate date from the date of service; and
  - there is deemed acceptance of the notice where the full amount of rent outstanding is not paid and an application has not been filed.
- [17] The standard form eviction notices for non-payment of rent are similar under the former and current rental laws. The Officer has reviewed both forms and is satisfied that the elements in section 30 of the *Interpretation Act* have been met. The Officer finds that the deviations between the forms do not invalidate the Notice.

### Rent Owning

- [18] The basis for terminating the tenancy between the parties is pursuant to subsection 60(1) of the *Act*, which states:

*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.*

- [19] The Officer has reviewed the rent payments in the Landlord's evidence. The Officer notes the Tenant's evidence that, although she was unsure of the exact amounts, the numbers provided by the Landlord sounded about right. Based upon the evidence presented, the Officer finds that the amount of rent owed by the Tenant to the Landlord was \$2,698.00 as of September 3, 2023 and \$3,598.00 as of November 23, 2023.
- [20] Further, the Tenant did not file an application disputing the Notice. For this reason, the Tenant is also deemed to accept the Notice pursuant to subsection 60(5).

### **Oral Agreement**

- [21] At the hearing the Tenant stated that there was a conversation with the Landlord that she would have additional time to pay the outstanding rent. The Landlord stated that he had been willing to give the Tenant more time to pay the unpaid rent, however, the Tenant never paid the rent up to date. Therefore, the Landlord decided to move forward with the Application.
- [22] The Officer notes that the Tenant was served with the Notice on September 3, 2023 and the Landlord waited until November 10, 2023 before filing the Application. The Landlord could have filed the Application on Monday, September 25, 2023 but he instead waited an additional 1.5 months.
- [23] The Landlord's patience with the Tenant has resulted in the net unpaid rent increasing by \$900.00 from September 3, 2023 to November 23, 2023. The Officer finds that the Tenant has provided insufficient evidence of any oral agreement with the Landlord that would invalidate the Notice or the Application.

### **Conclusion**

- [24] The Notice is valid and the Application is allowed. The Tenant and all occupants must vacate the Rental Unit by the timeline stated below.
- [25] The Tenant owes rent to the Landlord in the amount of \$3,598.00, plus the rent for four days in December (\$129.03; 4 days divided by 31 days multiplied by \$1,000.00), in the total amount of \$3,727.03.
- [26] As noted above, the Landlord's monetary claim is the subject of Order LD23-551.

### **IT IS THEREFORE ORDERED THAT**

1. The tenancy between the parties shall terminate effective **5:00 p.m. on December 4, 2023**. The Tenant and all occupants must vacate the Rental Unit by this time and date.
2. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

**DATED** at Charlottetown, Prince Edward Island, this 27th day of November, 2023.

\_\_\_\_\_  
(sgd.) Andrew Cudmore

Andrew Cudmore  
Residential Tenancy Officer

**Appendix "A"**

Content removed for confidentiality reasons

Appendix "B"

FORM 4 (A)
EVICITION NOTICE

Tenants have ten (10) days to dispute this Eviction Notice

TO: \_\_\_\_\_
(Tenant)

I give you notice of termination of the tenancy agreement of the residential unit located at:

\_\_\_\_\_
you must vacate on or before the effective date of \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

I am terminating our tenancy agreement for the following reason(s):

- (a) \_\_\_\_\_ You have not paid your rent in the amount of \$\_\_\_\_\_,
[YOU ARE ADVISED OF YOUR RIGHT TO INVALIDATE THE RENT PORTION (a) OF THIS NOTICE BY PAYING ALL RENT DUE WITHIN TEN (10) DAYS OF RECEIVING THIS NOTICE].
(b) \_\_\_\_\_ You have not paid the security deposit;
(c) \_\_\_\_\_ You are repeatedly late in paying rent;
(d) \_\_\_\_\_ You have permitted an unreasonable number of occupants in the rental unit;
(e) \_\_\_\_\_ You or someone you have allowed on the property have disturbed or endangered others;
(f) \_\_\_\_\_ You or someone you have allowed on the property have engaged in illegal activity on the property;
(g) \_\_\_\_\_ You or someone you have allowed on the property has caused damage to the rental unit;
(h) \_\_\_\_\_ You have not repaired damage to the rental unit;
(i) \_\_\_\_\_ You have failed to comply with a material term of the tenancy agreement;
(j) \_\_\_\_\_ You have sublet the rental unit without the landlord's consent;
(k) \_\_\_\_\_ You have knowingly given false information about the rental unit;
(l) \_\_\_\_\_ There is an order requiring the rental unit to be vacated;
(m) \_\_\_\_\_ Our employment relationship has ended.

Date: \_\_\_\_\_
(Day/Month/Year)

Landlord Signature: \_\_\_\_\_

Landlord Name (print only): \_\_\_\_\_

Landlord Tel & Email address (print only): \_\_\_\_\_

The effective dates are:

- For reason (a), at least twenty (20) days from the date of service of notice;
• For reasons (b) - (m), inclusive, at least one (1) month from the date of service of notice AND the day before rent is payable under the tenancy agreement

Permitted Types of Service / Substituted Service:

- 1. Hand delivered / Personally delivered\*;
2. Mailing by registered or ordinary mail;
3. E-mail;
4. Posting the document to the front door of the rental unit.

The address and contact information of the Residential Tenancy Office is
PO. Box 577, Charlottetown, PE, C1A 7L1; telephone number 902-368-7878 or 1-800-501-6268
Email: askrental@peirentaloffice.ca; Website: www.peirentaloffice.ca

## 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.