

Introduction

- [1] On November 1, 2023 the Subtenants filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is disputing an eviction notice pursuant to subsections 60.(4) and 61.(5) of the *Act*. The Application further alleges the Tenant contravened the *Act*.
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) dated November 1, 2023 effective November 21, 2023 (the "Notice"). It is noted that the effective date was absent from the Notice. The Notice was given to the Subtenants for the following reasons:

*You have not paid rent in the amount of \$1,000.00;
You are repeatedly late in paying rent; and
You have failed to comply with a material term of the tenancy agreement.*

- [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 16, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A subtenant appeared, representing the Subtenants. The Tenant appeared, representing themselves.

Preliminary Matter & Conclusion

- [5] During the hearing the parties confirmed that the Subtenants have vacated from the Residential Property. The Officer finds that a determination on the Notice is not required. The Application's remaining issue is the alleged breach of the *Act* by the Tenant.

Issue to be Decided

- i. Did the Tenant contravene the *Act*?

Summary of the Evidence

- [6] On October 1, 2023 the parties entered into a verbal month-to-month tenancy agreement. The agreement was for a room in the Residential Property. Rent was \$500.00 each month, paid in \$250.00 installments every two weeks. The parties disputed over the amount for the security deposit.

Subtenants' Evidence and Submissions

- [7] The Subtenants submitted into evidence 20-pages of documents which include (text message conversations between the parties, and screenshots of e-transfer payments).
- [8] The Subtenants asked the Tenant to have a written agreement. The Subtenants agreed to monthly rent payments and not biweekly payments. The terms of the tenancy agreement changed without agreement from the parties. The Tenant served them with the Notice and then removed the internet, heat and blocked them from parking.
- [9] The Subtenants disputed the Tenant's testimony regarding non-payment of rent and the security deposit.

Tenant's Evidence and Submissions

- [10] The Tenant did not submit any documents into evidence, however, provided oral testimony at the hearing.
- [11] The Subtenants' \$900.00 payment on September 2, 2023 was for outstanding rent from another rental property that they were living at together. Rent is due every two weeks. The Subtenants paid the first two weeks, but never paid rent after that. The Subtenants owed rent on October 13, 2023 and then October 27, 2023 and then November 10, 2023. The Subtenants have not paid their portion of the utility bill.
- [12] The Tenant denied turning off the heat and/or the internet. The Tenant testified that the internet password changed on moving to the Residential Property, but he did not remove the service. The Tenant testified that he lost money due to the Subtenants and he wanted them out of the Residential Property.

Analysis

- [13] The Officer begins by referencing the relevant law for the Application. Subsections 21.(1) and 28.(1) of the *Act* states:
- 21. Terminating or restricting services or facilities**
(1) *A landlord shall not terminate or restrict a service or facility if*
(a) *the service or facility is reasonably related to the tenant's use and enjoyment of the rental unit as living accommodation; or*
(b) *the service or facility is a term of the tenancy agreement.*
- 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.*
- [14] The Application is seeking a determination that the Tenant breached the *Act*. In such applications, it is the person(s) alleging the breach burden or onus to prove, on a balance of probabilities, any and all claims made against the other party. This means the alleging party must provide sufficiently clear, convincing and cogent evidence to prove their claim(s).
- [15] After reviewing the documents provided into evidence and hearing the testimony of the parties the Officer concludes that there is insufficient evidence to conclude the Tenant breached the *Act*. The documents provided into evidence along with the Subtenant's oral testimony does not provide sufficient evidence to conclude the Tenant breached subsections 21.(1) and/or 28.(1) of the *Act*. Therefore, the Application is denied.

Conclusion

- [16] The Application is denied.
- [17] **Order LD23-552 will be served on the parties by e-mail on November 27, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 27th 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.