

Introduction

- [1] On November 1, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”).
- [2] Attached to the Application was an *Eviction Notice* (Form 4(A)) (the “Notice”) dated November 1, 2023, with a vacate date of December 1, 2023. The Notice was served to the Tenant for the following reasons:

*You or someone you have allowed on the property has caused damage to the rental unit;
and
You have not repaired damage to the rental unit since August 2023.*

- [3] The first remedy sought in the Application is to dispute the Notice, which is the subject of this decision. The second remedy sought is a return of rent due to an unlawful rent increase, which is the subject of Order LD23-557. The Officer has found that the authorized rent is \$2,100.00 per month.
- [4] On November 21, 2023 a teleconference hearing was held before the Officer for determination of the Application. The parties confirmed receipt of the evidence package. The Officer permitted a copy of the tenancy agreement to be submitted after the hearing.

Issue to be Decided

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

Summary of the Evidence

- [5] The Landlord and the Tenant entered into a written, fixed term tenancy agreement dated October 7, 2021 for the period of October 10, 2021 to October 9, 2022. The tenancy continued at the end of the fixed term. The agreement states that rent in the amount of \$2,100.00 was due each month and a \$2,100.00 security deposit was paid. The agreement also states: “...*Will pay 1st rental Oct. 20th, and then pay rental on 10th each month afterwards.*” These terms are repeated in clauses 7 and 8 of Schedule “D.”
- [6] The Rental Unit is a three-bedroom, two-and-a-half-bathroom unit in a triplex building that the Landlord purchased in September 2021 (the “Residential Property”).

Landlord’s Evidence

- [7] The Landlord’s evidence is summarized as follows. The Landlord purchased the new Residential Property in September 2021. The Tenant and her family are the first occupants of the Rental Unit.
- [8] The tenancy agreement has a monthly rent for the period of the tenth day of one month to the ninth of the next month (e.g. October 10 to November 9). After the agreement commenced, the parties agreed that rent would be due on the twentieth day of the month (e.g. October 20), midway through the period. The Tenant has paid rent late, with the payment for the period of October 10, 2023 to November 9, 2023 being made on October 31, 2023. As of the hearing date the Landlord had not received the rent for the period of November 10, 2023 to December 9, 2023.
- [9] On August 5, 2023 the Tenant advised the Landlord that she had left the living room window open, which caused rain damage to an electric wall heater. The Tenant paid for the heater replacement. When the Landlord investigated the wall heater issue other damage was noted, which is set out in a ten-point list dated August 5, 2023 provided to the Tenant. The Landlord requested that the

Tenant move out before October 10, 2023. On August 13, 2023 the Tenant agreed to repair the damage so she could continue to stay in the Rental Unit.

[10] On November 1, 2023 the Tenant advised the Landlord that she could not find anyone to repair the damage and the Landlord then decided to serve the Notice.

[11] On November 14, 2023 the Landlord had photographs taken of the Rental Unit. The Landlord also had a drywall and painting contractor view the unit (the "Contractor"). The Landlord submitted into evidence an email from the Contractor which states in part:

"... I was shocked to see the amount of drydex all over the wall for such a new spot..."

As for the walls of the unit, I noticed the amount of drydex throughout every wall of the house. This is to much and will be painful to sand down appropriately. I would also recommend your tenant not to paint the walls in the fashion she had mentioned. These walls need to be sanded, and properly cleaned and roll the paint on. Using a brush to touch up the paint will make all the holes stand out even more..."

[12] With regard to the Tenant's evidence, below, the Landlord disputes that there was an agreement for the Landlord to pay the paint cost of the DryDex patched walls.

[13] The Landlord provided evidence regarding other damage to the Rental Unit.

Tenant's Evidence

[14] The Tenant's evidence is summarized as follows. The Tenant pays rent each month for the calendar month. The parties agreed to rent payments occurring on the twentieth day of the month. The Tenant receives some funds near the end of the month and for this reason her most recent rent payment was on October 31, 2023.

[15] On August 5, 2023 the Tenant advised the Landlord that she had left the living room window open, which caused rain damage to an electric wall heater. The Tenant paid \$460.00 for the replacement of the heater.

[16] There is damage to the Rental Unit that has been fixed. The Tenant had the railing at the bottom of the stairs removed in order to install a baby gate. The railing has been replaced and this issue has been fixed. The Tenant submitted into evidence a photograph of the railing after the repairs were completed.

[17] On November 8, 2023 the Tenant used Drydex on the walls, a white seem filling material, in order to repair tiny scratches and tack holes. On November 14, 2023 the Tenant asked the Contractor what grain of sandpaper to use on the walls and was advised to use a 180 to 220 grain. The Landlord had previously agreed to provide the Tenant paint for the repairs but only provided a small amount.

[18] The Tenant provided evidence regarding other damage claimed by the Landlord. The Tenant submits that much of the damage claimed by the Landlord is normal wear and tear.

Analysis

Effective Date of the Notice

[19] The Tenant stated that the period of rent goes from the beginning to the end of the month (e.g. October 1 to October 31). However, the Landlord's evidence that the periods of the tenancy agreement go from the tenth day of one month to the ninth of the next month is consistent with the terms of the written tenancy agreement. Periods of tenancy agreement are frequently from the

beginning to the end of the month, however, landlords and tenants are permitted to agree to different periods. In this case, the Officer finds that the parties agreed to periods from the tenth day of one month to the ninth day of the next month.

[20] The October 2021 tenancy agreement states that rent for the first month would be due on the twentieth day. All other rent payments were to be made on the tenth day of the month, the beginning of the period set out in the tenancy agreement.

[21] The evidence of the parties establishes that the rent due date was changed to the twentieth day of the month for all months. Although the Landlord has accepted rent later than the twentieth day of the month, it does not appear that there was an agreement to extend the rent due date past the twentieth day of the month.

[22] Subsection 61(3) states:

A notice of termination under this section shall end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received; and*
- (b) the day before the day that rent is payable under the tenancy agreement.*

[23] As rent is due by the twentieth day of the month, the Officer finds that the effective date of the Notice is automatically changed from December 1, 2023 to December 19, 2023, pursuant to section 54 of the Act.

Validity of the Notice

[24] The Landlord seeks to end the tenancy on the following bases:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

- (f) the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property;*
- (g) the tenant does not repair damage to the rental unit or residential property, as required under section 28(4), within a reasonable time;*

[25] Subsection 28(4) states:

*A tenant of a rental unit shall repair, **in a good and professional manner**, undue damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

[Emphasis added]

[26] The Rental Unit was new at the beginning of the tenancy. The photographs submitted into evidence show white DryDex was applied extensively throughout the Rental Unit by the Tenant to attempt to fix scratches, dents and other damage. The Contractor stated the following with regard to the DryDex applied by the Tenant: *"This is to much and will be painful to sand down appropriately."* It appears to the Officer that the Tenant's DryDex application has complicated the wall repairs.

[27] Based upon the photographs submitted into evidence, most of the Rental Unit walls will need to be professionally repaired and repainted. This painting work would not be expected within a two-year period for a new unit, let alone the repair of significant wall damage.

- [28] Had the damage and DryDex application been limited to a single area then the Landlord may not have grounds to end the tenancy. However, the Officer finds that the widespread nature of the damage and attempted repair constitute unreasonable damage and a breach of clause 61(1)(f) has been established.
- [29] The Landlord requested that the Tenant make repairs to the Rental Unit in August 2023. The Tenant attempted repairs of the walls on November 8, 2023. Subsection 28(4) requires that repairs be completed "*in a good and professional manner*" but this standard has not been met by the Tenant. The Landlord provided the Tenant with approximately three months to complete the wall repairs, however, the work remains incomplete.
- [30] The Tenant claimed that the repairs were delayed because the Landlord agreed to provide paint, but only provided a small amount. However, the Tenant did not attempt the preliminary step of repairing the walls until November 8, 2023. Further, the Landlord disputes that he agreed to provide paint to all of the walls patched with DryDex. For these reasons, the Officer finds that the Landlord has also established a breach of clause 61(1)(g).
- [31] The Officer finds that the Notice is valid and the Application is denied in part. The Tenant and all occupants must vacate the Rental Unit.

Vacate Date

- [32] The Officer has discretion to extend notice periods pursuant to clauses 85(1)(f) and (n) of the *Act*, which state:

After hearing an application, the Director may make an order

- (f) directing a tenant to vacate the rental unit on a specified date;*
(n) extending or reducing any notice period under in this Act;

- [33] Due to the Tenant's family circumstances and to provide the Tenant with additional time to secure housing, the Officer extends the vacate date from December 19, 2023 to January 31, 2024.
- [34] The Tenant is responsible to pay the rent due by the twentieth day of the month for the periods of November 10, 2023 to December 9, 2023 (\$2,100.00), December 10, 2023 to January 9, 2024 (\$2,100.00); and January 10, 2024 to January 31, 2024 (22 of 31 days, in the prorated amount of \$1,490.32). The Officer notes that the rent for November 10, 2023 to December 9, 2023 should already have been paid in full by the Tenant, by November 20, 2023. At the date of the hearing the rent for this period was outstanding.

Conclusion

- [35] The Notice is valid and the Application is denied in part. The Tenant and all occupants must vacate the Rental Unit as provided below.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the parties shall terminate effective **5:00 p.m. on January 31, 2024**. 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*.
3. The Tenant is responsible to pay the rent due by the twentieth day of the month, for the periods of:
 - (1) November 10, 2023 to December 9, 2023;
 - (2) December 10, 2023 to January 9, 2024; and
 - (3) January 10, 2024 to January 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 29th day of November, 2023.

(sgd.) Andrew Cudmore

Andrew Cudmore
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.