

Introduction

- [1] On November 10, 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 2, 2023, with a vacate date of November 23, 2023. The Notice was served to the Tenant for the following reasons:
- (a) *You have not paid you rent in the amount of \$975.00;*
(b) *You have not paid the security deposit; and*
(c) *You are repeatedly late in paying rent.*
- [3] The first remedy sought in the Application is to dispute the Notice. The second remedy sought is an order for repairs.
- [4] On November 28, 2023 a teleconference hearing was held before the Residential Tenancy Officer (the "Officer") for determination of the Application. The parties confirmed receipt of the evidence package.

Issues to be Decided

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

Preliminary Matters

- [5] During the hearing the Tenant stated that she reported the Landlord to the Department of Environmental Health ("Environmental Health"). After the hearing date the Officer became aware that Environmental Health had issued a letter to the Landlord dated November 9, 2023 regarding the Rental Unit (the "Inspection Letter"). The Rental Office was also sent a copy of the Inspection Letter. It does not appear that the Landlord or the Tenant submitted this letter as part of their documentary evidence. The Rental Office emailed the parties and advised that the Inspection Letter would be part of the evidence before the Officer and provided the parties with an opportunity to make written comments with regard to this letter.
- [6] In this case there is an issue regarding whether the corporate Landlord or the Representative is considered the "landlord." At the hearing both parties stated that the current location of the written tenancy agreement is unknown.
- [7] The Representative's personal name was identified as the landlord in the Notice. The Application has been made by the Tenant against the Representative. The Tenant stated that she has always known the Representative to be the owner of the Rental Unit.
- [8] However, based upon the documentary evidence submitted it appears that the corporate Landlord is the registered owner of the Rental Unit. Further, the Officer notes that a rent payment e-transfer document submitted into evidence by the Tenant has part of the Landlord's corporate name in the email address as the payment recipient (Evidence Package page 102). The Officer finds that the corporate Landlord is in fact the Tenant's landlord. Pursuant to clause 85(1)(l), the Notice is amended to be considered issued by the corporate Landlord.
- [9] Ideally a written copy of a tenancy agreement (where one exists) would be part of the evidentiary record for all Rental Office cases involving termination notices. The Officer notes that section 11 of the *Residential Tenancy Act*, which came into force on April 8, 2023, requires landlords to prepare a written tenancy agreement.

- [10] Where a landlord seeks to end a rental agreement for repeatedly late rent payments, both the landlord and the tenant should also submit a rent ledger showing the history of rent payment dates and amounts. In this case neither party submitted a rent ledger.
- [11] With regard to photographic evidence, the best practice is to date stamp each photograph at the time it is taken.

Summary of the Evidence

- [12] The Landlord and the Tenant entered into a written, fixed term tenancy agreement for the period of November 1, 2020 to October 31, 2021. At the end of the fixed term the agreement continued on a month-to-month basis. Rent in the amount of \$975.00 is due each month. The parties dispute the details of the rent due date and the security deposit.
- [13] The Rental Unit is a three-bedroom, one-bathroom single story mini-home that the Landlord has owned since the Fall of 2020.

Landlord's Evidence

- [14] The Landlord's evidence is summarized as follows. On the written tenancy agreement, the Tenant agreed to pay rent by the first day of the month. The Representative does not recall agreeing that all monthly rent payments could be completed after the first day of the month. The Representative stated that through his communications with the Tenant he was quite lenient regarding the payment date. Sometimes the rent payments were two weeks late, a month late or two months late. It has been about two years of constant late rent payments by the Tenant.
- [15] Since May 2023 the Tenant made the following late rent payments:
- May 2023 – \$880.00 on June 2, 2023 and \$50.00 on June 14, 2023 (\$45.00 unpaid)
 - June 2023 – \$975.00 on July 4, 2023
 - July 2023 – \$400.00 on August 3, 2023 and \$575.00 on September 1, 2023
 - August 2023 – \$500.00 on September 5, 2023 and \$475.00 on September 11, 2023
 - September 2023 – \$975.00 on October 3, 2023
 - October 2023 – \$975.00 on October 31, 2023
 - November 2023 – \$975.00 on November 7, 2023
- [16] It appears to the Representative that only \$930.00 of the rent for May 2023 was paid. However, the Representative stated "*that is fine*" and it can be classified as full payment for the month.
- [17] The Landlord now expects all rent payments to be made on time by the first day of the month.
- [18] The Tenant was supposed to pay a security deposit in the amount of \$975.00. The Representative submitted into evidence text messages with the Tenant on May 31, 2021, November 4, 2021 and March 13, 2022 where the Tenant acknowledged that the security deposit still had to be paid. The Tenant was having such a difficult time paying rent on time the Representative gave up hope that the Tenant would in fact pay the security deposit. The Representative wanted the Tenant to pay the security deposit once she caught up on her rent payments. The Landlord disputes the Tenant's evidence, below, of an agreement for cleaning and other work instead of security deposit payment.
- [19] The main driving reason that the Landlord served the Notice was that the Tenant was making disparaging comments about the Representative to another landlord after the Representative had put up with numerous late rent payments. The relationship with the Tenant became more hostile as the Representative became impatient with the late rent payments.

- [20] The Landlord has been addressing some of the repair issues raised by the Tenant. On November 14, 2023 the Landlord's contractor was fixing the skirting on the outside of the mini-home. This contractor wanted to also install new fire alarms but the Tenant refused access. The Landlord had a different contractor who was attending the Rental Unit around the same time for heater installation. The Representative has a new fire extinguisher ready to be dropped off to the Tenant.
- [21] With regard to the water quality of the Rental Unit, the Representative "shocked" the Rental Unit's well two times. This work significantly improved the water quality, but not enough to remove the boil water advisory. After speaking with Environmental Health on November 24, 2023, the Representative decided to install a UV light in the unit. The Tenant told the Representative that she needs to clean the room the water tank is in before the Representative can install the UV light. The Representative is waiting for a date from the Tenant that the Representative and his plumber can complete the installation.
- [22] The skirting recently installed around the mini-home is made of pressure treated lumber which cost about \$2,500.00. The Representative has a person that will be banking up the bottom of the skirting with soil. The Representative disputes the Tenant's claim, below, that it took 1.5 years for the roof repairs. The Representative had the roof re-stepped after one or two weeks. The Representative provided the Tenant with a dehumidifier for about two to three weeks.
- [23] The Representative does not know what type of pest may be at the Rental Unit.
- [24] The Representative is trying to get work done to the Rental Unit but it is tricky to work around the Tenant's work schedule and her dog.

Tenant's Evidence

- [25] The Tenant's evidence is summarized as follows. There was an oral agreement with the Representative prior to viewing the Rental Unit in 2020 that rent would be paid within the first week of the month. At that time, the Tenant told the Representative that she was unable to pay rent by the first day of the month because of her pay cycles.
- [26] The Tenant submitted into evidence partially redacted CIBC bank statements commencing January 2021. The Tenant stated that the rent payments in these document reflect the agreement with the Landlord that rent was not due on the first day of the month.
- [27] Since October 2023 the Tenant made the following rent payments:
- September 2023 – \$975.00 on October 3, 2023
 - October 2023 – \$975.00 on October 31, 2023
 - November 2023 – \$975.00 on November 7, 2023
- [28] The Tenant stated that she also made the following rent payments:
- \$880.00 on June 2, 2023, \$50.00 on June 14, 2023 and \$50.00 on July 13, 2023
 - \$975.00 on July 4, 2023
 - \$400.00 on August 3, 2023 and \$575.00 on September 1, 2023
 - \$500.00 on September 5, 2023 and \$475.00 on September 11, 2023
- [29] The Tenant submitted the following text message correspondence with the Representative from October 19, 2023:

Tenant

"Hey [Representative], just gonna let you know that I will be getting my first unemployment check next Friday so you'll have October's rent November's rent will be probably not until the fifth or sixth all of it. Most of it will be before that but that's when my next paycheque will come and another unemployment check, on another note..."

Representative
"OK no worries..."

[30] The Landlord required a security deposit from the Tenant in the amount of \$975.00. The Rental Unit was in a poor state at the beginning of the tenancy. The Representative and the Tenant made a word of mouth agreement that, instead of paying the security deposit, the Tenant would clean the Rental Unit and improve the unit. The Tenant agreed with the Landlord that she would not make a claim against the Landlord for this work. Since moving in, the Tenant has constantly made repairs to the Rental Unit.

[31] The Tenant submitted into evidence a letter from her daughter, M.C., which states in part:

"...The home was in dire need of cleaning, painting and other minor repairs and improvements prior to my mother moving in. In a verbal agreement, her landlord agreed to have her paint and clean the home to allow her to move in more quickly, this would also go towards the price of the damage deposit..."

[32] The Tenant submits that the Landlord served the Notice for two reasons. The first reason was the Tenant reported the Landlord to Environmental Health. The second reason was the Tenant made critical comments about the Representative to another landlord because the Representative was not completing repairs.

[33] The Tenant submitted into evidence a Fire Inspection Report dated November 10, 2023 with the following observations and recommendations:

"Observations:

1. Smoke detectors throughout the home are not functioning and are more than 20 years old.
2. Fire extinguisher that has been provided has not been inspected and is not sized appropriately.
3. No civic address is visible at the driveway or on the home.
4. Egress windows (bedrooms) and exterior doors seem to work but are difficult to operate.

Recommendations:

1. Smoke alarms shall be installed in All sleeping rooms Outside of each separate sleeping area, in the immediate vicinity of the sleeping room, and on each level of the dwelling unit, including basements in accordance with section 24.3.4. Smoke alarms shall not remain in service longer than 10 years from the date of manufacture in accordance with section 14.4.5.6 of NFPA 72, 2019 edition.
2. The selection, installation, inspection, maintenance, recharging, and testing of portable fire extinguishers shall be in accordance with NFPA 10, 2018 edition.
3. New and existing buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property in accordance with section 10.11 of NFPA 1, 2021 edition. Such signs shall conform with current Provincial Civic Addressing Standards and Guidelines.
4. All primary and secondary means of escape shall be maintained in working order all in accordance with section 24.2."

[34] The Tenant submitted into evidence a letter dated November 8, 2023 from Environmental Health titled *Boil Water Advisory* (the "Water Advisory Letter"). This letter is based on a sample taken on November 6, 2023 and the letter states in part:

*"This is to inform you that elevated bacterial counts have been confirmed in your water supply and that a **boil water advisory is immediately in effect until further notice...***

Well disinfection is suggested when a well has been found to be contaminated by bacteria..."

- [35] The Landlord did not provide proper written notice for the smoke alarm installation. The Tenant had just gotten out of bed and did not know in advance that a contractor wanted to come inside the Rental Unit regarding the alarms. The Tenant needs proper notice in order to prepare for the UV light installation.
- [36] The Tenant requested that the Landlord have pest control work completed under the mini-home. The Representative told the Tenant that traps would be installed but instead poison was placed. The Tenant does not know what type of pest has been below the mini-home.
- [37] The repair of the skirting on the mini-home is no better than before the repair work. There is a four to six-inch gap between the ground and the bottom of the skirting which allows cold air to blow underneath. The photographs submitted into evidence by the Tenant are from before the skirting repairs were completed.
- [38] Rain comes in through the back door of the Rental Unit. The Landlord installed two electric heaters near the floor. One of the heaters is not effective due to air coming in through the back door of the Rental Unit.
- [39] Items inside of the Rental Unit have molded due to moisture. The Rental Unit's roof leaked for about 1.5 years before it was fixed. The walls have been covered in mold.
- [40] Although the Tenant had two witnesses attend the hearing, only the Tenant provided testimony.

Letter from Environmental Health

- [41] The Inspection Letter states that concerns about the Rental Unit were brought to the attention of Environmental Health on October 31, 2023. An on-site visit was completed by an Environmental Health Officer on November 3, 2023. The Inspection Letter contains a number of observations and lists the following requirements:
- Ensure that the home can maintain the minimum temperature of 18.3°C or 65°F at all times using either primary or secondary heat sources
 - Windows and doors are to be assessed and repaired as necessary to ensure they are sealed and that the home is weatherproof
 - The HVAC unit is to be assessed and serviced as necessary
 - The skirting around the home is to be repaired to prevent potential harboring of any pests and to aid in retaining adequate floor temperatures
 - The private well is to be disinfected. After 48 hours from disinfection, 2 clear consecutive water samples (taken 24 hours apart) are required for Environmental Health to lift the Boil Water Advisory

Analysis

Rent Due Date

- [42] The parties provided conflicting evidence regarding the rent due date. Although the first day of the month is the most common due date for residential tenancy agreements, landlords and tenants can agree to a different date.
- [43] The Representative's evidence is that the agreed upon rent due date was the first day of the month in the written tenancy agreement. The Tenant's evidence was that the parties had an oral agreement for payment by the seventh day of the month, however, the Tenant did not dispute that the date in the written agreement was the first of the month.
- [44] The Tenant's October 19, 2023 text message quoted above is more consistent with a November 1 rent due date than a November 7 due date. The text message states that *"November's rent will be probably not until the fifth or sixth all of it"* which indicates to the Officer that the Tenant was acknowledging that November's rent would be late.
- [45] Although the Tenant's documentary evidence establishes that there has been a long history of rent payments after the first of the month, this does not establish that the Landlord agreed to a later payment date. It appears to the Officer that the rent due date was in fact the first day of the month and the Landlord was lenient regarding late rent payments.
- [46] Even if the Officer were to accept that the rent due date was the seventh day of the month, many of the Tenant's rent payments were made weeks' after the seventh day.
- [47] **The issue in this case is whether the Landlord can immediately rely on the strict terms of the tenancy agreement after a long history of allowing late rent payments and delayed payment of the security deposit.**

November 2023 Rent

- [48] The evidence of the parties establishes that the Tenant paid November 2023's rent within ten days of service of the Notice. Therefore, the unpaid rent basis for termination in clause (a) of the Notice was invalidated pursuant to subsection 60(4) of the Act.

Repeatedly Late Rent Payments

- [49] The Landlord's second basis for ending the tenancy is pursuant to clause 61(1)(b), which states:

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

(b) the tenant is repeatedly late in paying rent;

- [50] The Officer has reviewed the CIBC statements submitted into evidence by the Tenant. In these redacted documents, the only \$975.00 payment made on the first day of the month was sent on April 1, 2021. The Officer notes that some of the payment dates are unclear due to the redactions and neither party submitted a rent ledger showing a precise history of the rent payments.
- [51] The Tenant's argument is that the Landlord has allowed rent to be paid well after the first day of the month and he specifically allowed October and November rent to be paid by November 5 or 6. The Tenant's position is that it is unfair for the Landlord to serve the Notice after having permitted

payments after the first of the month for almost three years and recently advising the Tenant there was no problem paying the rent late.

- [52] Although the Tenant did not specifically state the term “equitable estoppel”, it appears that this is the legal principle upon which the Tenant relies. This raises the question whether the Officer has authority to consider equitable estoppel.

Application of the “Common Law”

- [53] At page 192 of *Halsbury’s Laws of Canada* (1st ed., LexisNexis, 2017 Reissue) the purpose of residential tenancy legislation is described as follows:

“The overarching objective of the residential tenancy regime is to protect the rights of tenants, who are often not in an equal bargaining position with landlords when leases are negotiated. Residential tenancies legislation is therefore remedial in nature and, according to the Ontario Court of Appeal, “its provisions must be interpreted liberally to ensure the realization of its objectives”. Any ambiguity in the language of the legislation must be resolved in favour of tenants.”

- [54] The Officer has searched the Daily Debates of the Legislative Assembly regarding the *Residential Tenancy Act*, Bill No. 87. Section 101 was immediately carried during the Committee of the Whole House (Second Session of the Sixty-Sixth General Assembly, 24 November 2022, page 5771), without additional debate. The original bill tabled in the Legislature does not have explanatory notes.

- [55] At page 530 of the *Construction of Statutes* (7th ed., LexisNexis, 2022) the following is stated regarding legislation and the common law:

“It follows from the principle of legislative sovereignty that validly enacted legislation is paramount over the common law.⁸ Acting within its constitutionally defined jurisdiction, the legislature can change, add to or displace the common law as it thinks appropriate and the courts must give effect to that intention...”

⁸ *Common law in this context refers to all judge-made law, including equity...”*

- [56] Part 7, Division 2 of the *Act* sets out the *Application of Other Law* to residential tenancies on Prince Edward Island (sections 101 to 105). In particular, section 101 states:

Except as modified or varied under this Act, the common law respecting landlords and tenants applies in Prince Edward Island.

- [57] It appears to the Officer that the purpose of section 101 is to set out the Legislature’s intention regarding the interplay between the *Act* and the common law. Further, it appears that in this context common law means all judge made law, including equity.

- [58] The term “common law” is not defined in the *Act*, the *Residential Tenancy Act Regulations*, EC269/23, or the *Interpretation Act* RSPEI 1988, I-8.1. The ordinary meaning of the term “common law” is defined at page 198 of *The Dictionary of Canadian Law* (5th ed., Thomson Reuters, 2020):

COMMON LAW. 1. In contrast to statute law, canon (or ecclesiastical) law and the civil law, law which relies for its authority on the decisions of the courts and is recorded in print or electronically as decisions of judges along with the reasons for their decisions. 2. Judge-made law. Includes the interpretation of statutes and subordinate legislation by judges.

- [59] The ordinary meaning of “common law” would permit the Officer to consider equitable estoppel, so long as this principle has not been modified or varied by the *Act*.

- [60] Section 101 of the Act is very similar to section 10 of Saskatchewan's *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001, which states:

Except as modified or varied by this Act or the regulations, the common law applies to tenancy agreements.

- [61] In the Saskatchewan case *Cheon v. Altern Properties Inc.*, 2015 SKQN 23, the following is stated at paragraph [18]:

"...It is beyond question that the common law (including equitable estoppel) applies to tenancy agreements unless otherwise modified by the Act. (s. 10 of the Act; Smith v Elite Property Management Ltd., 2012 SKQB 12, 389 Sask R 63)."

- [62] There are also many similarities between the Act and British Columbia's *Residential Tenancy Act* SBC 2002, c.78 (the "BCRTA"). In particular, Part 7, Division 2 of the Act is similar to Part 6, Division 2 (Application of Other Law) of the BCRTA, which states as follows at section 91:

Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

- [63] The British Columbia Supreme Court has applied equitable estoppel in judicial reviews of Residential Tenancy Branch decisions. The case *Guevara v. Louie*, 2020 BCSC 380 (the "Guevara Decision") considered whether equitable estoppel was a defence for a residential tenant being evicted for repeatedly late rent payments. The legislation regarding repeatedly late rent payments in the BCRTA (clause 47(1)(b)) is very similar to clause 61(1)(b) of the Act.

- [64] The following was stated at paragraphs [62], [63], [67] and [68] of the Guevara Decision:

"[62] ...However, the real issue before [the Arbitrator] was whether [the landlord] was estopped from enforcing a provision of the tenancy agreement by her past conduct. That issue required a determination of whether [the landlord's] conduct led [the tenant] to conclude that e-transferring the rent within a day or two after the first of the month was acceptable to her. Therefore, the proper question was whether [the landlord] could rely on past instances of rent not being paid on the first of the month to terminate the tenancy agreement when for years she had acquiesced in the manner that rent was paid. Specifically, had [the landlord] represented through her conduct and communications that she did not require strict compliance with the term of the tenancy agreement stating that rent must be paid on the first day of the month.

[63] While the legal test of waiver requires a "clear intention" to "forgo" the exercise of a contractual right, the equitable principle of estoppel applies where a person with a formal right "represents that those rights will be compromised or varied." Tymchuk v. D.L.B. Properties, 2000 SKQB 155 at paras. 11-17. Unlike waiver, the principle of estoppel does not require a reliance on unequivocal conduct, but rather "whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely upon it." Bowen v. O'Brien Financial Corp., 1991 CanLII 826 (BC CA), [1991] B.C.J. No. 3690 (C.A.). Thus, the relevant legal concept before the Arbitrator was not waiver of a contractual right, but rather whether [the landlord's] prior conduct estopped her from relying on past rental payments made a day or two after the first of each month to evict [the tenant] on the grounds of "repeatedly late" payment under s. 47(1)(b) of the RTA...

[67] The distinction between waiver and estoppel is vital in this case because [the landlord] relies on alleged defaults that occurred before she gave any indication that she required

strict compliance with the requirement to pay rent on the first of the month. It is not until email reminders dated May 2 and June 3, 2019, that [the landlord] states that she would require “all future payments” to be made on the 1st of the month. Such a notice would have had to be clear. As reviewed, previous correspondence regarding rental payments made after the 1st of the month involved language to the effect of ‘please transfer rent at your earliest convenience’ and ‘do you know when I can get the rent?’ (December 2018 correspondence). In light of [the landlord’s] history of acquiescence, I find that [the landlord] could not rely on instances where [the tenant] paid rent after the 1st of the month, where these payments occurred prior to [the landlord’s] notice that she would require [the tenant’s] strict compliance with the tenancy agreement’s rental payment due date. I find [the landlord] was required to give [the tenant] reasonable notice that strict compliance would be enforced, before taking steps to terminate the residency for late payment. Such notice was not provided.

[68] Estoppel has been a fundamental principle of the law for a long time: see Hughes v. Metropolitan Railway Co. (1877), 2 App. Cas. 439...”

- [65] Equitable estoppel has been found to be a necessary consideration in another judicial review of a Residential Tenancy Branch before the British Columbia Supreme Court, *LaBrie v Liu*, 2021 BCSC 2486. The following is stated at paragraphs [54] and [55]:

“[54] In Guevara, Justice Sewell considered a case in which the landlord had, over a period of years, occasionally acquiesced to late rent payments. He held the landlord could not rely on late payments made and received without complaint to count toward the requisite minimum three late payments to justify termination based on the principle of equitable estoppel. The tenant did not raise the equitable estoppel argument using those precise words, but the facts of matter raised it in substance. Justice Sewell concluded it was patently unreasonable to have not addressed it.

[55] I reach the same conclusion.”

- [66] It appears to the Officer that equitable estoppel must also be considered in this case.

Does Equitable Estoppel Apply

- [67] In this case there is a three-year history of late rent payments by the Tenant to the Landlord with numerous payments well past the first day of the month. Further, on October 19, 2023 the Landlord was advised that the Tenant’s October rent would be paid shortly, which was already 18 days late. The Tenant also advised that November’s rent would be paid around November 5 or 6. The Representative’s response to this text message was “OK no worries...”
- [68] Due to the Landlord’s acquiescence regarding numerous late rent payments and the text message communication on October 19, 2023, the Landlord was estopped from terminating the Tenant’s rental agreement for past late rent payments. The Landlord’s conduct led the Tenant to reasonably believe that paying rent very late and paying November rent around November 5 or 6 would not result in the termination of her tenancy agreement. The Landlord’s conduct and communications represented to the Tenant that he would not require strict compliance of rent being paid by the first day of the month.
- [69] The Landlord was required to first provide the Tenant with reasonable notice that strict compliance would be enforced before taking steps to terminate the tenancy for repeatedly late payments (see paragraph [67] of the *Guevara* Decision).

- [70] In the Notice the Landlord also seeks to end the tenancy agreement for non-payment of the security deposit.
- [71] The Tenant's evidence is that there was an agreement that the security deposit was already considered paid. The Tenant submitted into evidence a letter from M.C. stating that the Landlord agreed to the Tenant completing cleaning and other work at the beginning of the tenancy in lieu of the security deposit. However, this position appears inconsistent with the Tenant's text messages with the Landlord on May 31, 2021, November 4, 2021 and March 13, 2022. These text messages contain acknowledgements from the Tenant that the security deposit remained outstanding well after the commencement of the tenancy.
- [72] Furthermore, the Representative has denied any agreement cancelling the requirement for a \$975.00 security deposit payment. The evidence presented does not establish that both parties intended for work to be completed in lieu of a \$975.00 security deposit payment.
- [73] The last request by the Representative for the security deposit was on March 13, 2022. This request was almost 1.5 years before the Notice was served. The Representative's evidence was that he lost hope that the Tenant would pay the security deposit and he did not make further requests. The Officer finds that the Landlord was estopped from terminating the Tenant's rental agreement for non-payment of the security deposit until the Landlord provided reasonable notice that strict compliance with the tenancy agreement would be enforced.
- [74] The Officer finds that it is now clear that the Landlord requires strict compliance with the tenancy agreement. Therefore, the Tenant must pay rent in full by the first day of the month. Further, if the Tenant continues to rent the Rental Unit from the Landlord as of February 1, 2024, then the Tenant must pay the Landlord the \$975.00 security deposit on or before February 1, 2024.

Island Regulatory and Appeals Commission Order LR23-66

- [75] This case appears to be distinct from Order LR23-66 of the Island Regulatory and Appeals Commission. A termination notice was served for repeatedly late rent payments and the following comment was made at paragraph 17:

"The Commission notes that the Act provides that a Landlord may, under section 61(1)(b), evict a tenant who is repeatedly late paying rent. It is therefore in the Landlord's discretion whether to evict and so long as the Landlord proves that the Tenant was repeatedly late in paying rent, and that the Notice was served, then the eviction will stand. While a landlord may seemingly tolerate late payment for some time, the Act permits an eviction based on repeated late payment of rent and no warning is required."

- [76] However, the facts in Order LR23-66 appear to be distinct from this case. On October 19, 2023 the Landlord specifically agreed to the late payment of October and November 2023 rent and then decided to serve the Notice before this extended period expired. The Landlord also served the Notice for a reason unrelated to repeatedly late rent payments, namely critical comments by the Tenant to another landlord.

Repairs

- [77] The Fire Inspection Report dated November 10, 2023 raises serious concerns regarding the Rental Unit. The Landlord's evidence is that he is actively attempting to address the recommendations in the report. The Officer finds that the Landlord must comply with the four recommendations in the report.
- [78] The Water Advisory Letter establishes that there were problems with the water at the Rental Unit as of November 6, 2023, the date a water sample was taken. The Representative's evidence establishes that, as of the hearing date, steps had been taken to address the water quality.

- [79] Section 8.1 of the *Public Health Act Rental Accommodation Regulations*, EC142/70, as amended, states as follows:

The owner of a dwelling unit, housekeeping unit, apartment or other rental accommodation to which these regulations apply shall provide hot and cold running potable water under adequate pressure in all kitchen and bathroom facilities in the dwelling unit, housekeeping unit, apartment or other rental accommodation.

- [80] The Officer finds that the Landlord must ensure that all kitchen and bathroom facilities of the Rental Unit have potable water. The Landlord must pay for the water sample testing costs required to remove the boil water advisory.
- [81] The Officer finds that the Landlord must complete all the requirements listed in the Inspection Letter from Environmental Health dated November 9, 2023.

Conclusion

- [82] The Notice is invalid and the Application is allowed. The tenancy between the parties will continue in full force and effect.
- [83] The Tenant must pay rent in full by the first day of the month and the Tenant must pay the security deposit as stated below.
- [84] The Landlord must complete the work stated below.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid and the Application is allowed.
2. The tenancy between the parties will continue in full force and effect.
3. The Tenant must pay rent in full by the first day of the month.
4. If the Tenant continues to rent the Rental Unit from the Landlord as of February 1, 2024, then the Tenant must pay the Landlord the \$975.00 security deposit on or before February 1, 2024.
5. The Landlord must comply with the four recommendations for the Rental Unit set out in the Fire Inspection Report dated November 10, 2023.
6. The Landlord must ensure that all kitchen and bathroom facilities of the Rental Unit have potable water. The Landlord must pay for the water sample testing costs required to remove the boil water advisory.
7. The Landlord must comply with the five requirements for the Rental Unit set out in the Inspection Letter from Environmental Health dated November 9, 2023.

DATED at Charlottetown, Prince Edward Island, this 15th day of December, 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 **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.