

Introduction

- [1] On December 4, 2023, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking the following remedies:

To request an order directing my tenant to pay outstanding rent;
To request my tenant vacate the rental unit and ordering the Sheriff to put me into possession of the rental unit;
To make claim against the security deposit; and
Other: "tenancy agreement violation(s)"

- [2] Attached to the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated November 8, 2023, effective December 1, 2023. The Notice was given to the Tenant for the following reason:

You have not paid your rent in the amount of \$1,500.00.

- [3] On November 8, 2023, the Landlord served the Notice to the Tenant by email in accordance with subsection 100.(1) of the *Act*. On December 4, 2023, the Landlord served the Application on the Tenant by email and on December 5, 2023, the Landlord served the Application on the Tenant again by posting it to the Tenant's door, both methods being in accordance with subsection 100.(1) of the *Act*.
- [4] On December 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord participated in the hearing. The Tenant did not participate in the hearing. The Rental Office telephoned the Tenant, left a message, sent an email, and waited ten minutes before proceeding with the hearing.
- [5] At the hearing, the Landlord withdrew her claim for rent owing as the Tenant had since paid the outstanding rent owing. The Landlord additionally withdrew the claim against the security deposit for damage to the Residential Property as the tenancy has not yet ended. Further, "tenancy agreement violation(s)" is not a remedy and this claim was discontinued. The sole remaining issue for the hearing was whether the Tenant must vacate the Residential Property due to the Notice.

Issue to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [6] On April 27, 2022, the Landlord and the Tenant entered into a written one-year fixed-term tenancy agreement from June 1, 2022, to May 31, 2023 for the Residential Property, after which it converted to a month-to-month tenancy. The Residential Property is a single detached house. Rent is \$1,500.00 due on the first day of the month. A security deposit of \$1,500.00 was required and paid.

Landlord's Evidence and Submissions

- [7] The Landlord submitted 12 pages of documentary evidence, including copies of email exchanges with the Tenant, a copy of the tenancy agreement, and a copy of a handwritten rental ledger for the Residential Property.

- [8] The Landlord testified that the Tenant has been late paying rent a number of times since the tenancy began. She stated that the Tenant was previously given an eviction notice in July 2023, however the Tenant paid the amount owing within 10 days which invalidated the eviction. The Landlord submitted copies of emails between the Landlord and Tenant from July 2023 in which the Tenant acknowledged being behind in rent, but expressed disappointment that she was not given more accommodation in arranging payments.
- [9] The Landlord testified that the Tenant did not pay rent in November 2023 and therefore she served the Notice on the Tenant on November 8, 2023, by email. The Landlord further testified that the Tenant did not pay rent at the beginning of December 2023.
- [10] The Landlord submitted copies of emails between the Landlord and Tenant dated November 17, 2023. The Tenant acknowledged being behind on rent, but requested that the Landlord accept late payment as she has had financial difficulties due to recent health issues. The Landlord replied that November 17, 2023 is the final day to invalidate the Notice by paying the full amount of rent owing.
- [11] The Landlord acknowledged that as of the date of the hearing, the Tenant was up to date on rent. The Tenant paid the rent owing for November 2023 on December 14, 2023. The Tenant also paid rent owing for December 2023 on December 16, 2023. The Landlord testified that these payments were automatically deposited by e-transfer in her bank account. She further testified that she never advised that acceptance of these late payments would cancel the eviction. Both of these payments are shown on the Landlord's rental ledger.
- [12] The Landlord stated that she still wished to have the Tenant evicted. The Notice states that the Tenant only has 10 days to pay the full amount of rent owing in order to invalidate the eviction. The Tenant only paid rent for November 2023 over a month after the Notice was given. Further, the Landlord stated that the Tenant has shown a repeated pattern of being unable to pay rent on the due date.

Tenant's Evidence and Submissions

- [13] The Tenant did not submit any documentary evidence and did not participate in the hearing.

Analysis

- [14] The Landlord's reasons for terminating the tenancy agreement are pursuant to subsections 60.(1), of the *Act*, which states:

60.(1) *Landlord's notice for non-payment of rent*

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.

- [15] The Officer finds that based on the merits of this case, and specifically, the copies of the rental ledger and the Landlord's undisputed testimony, the Landlord has established valid grounds for terminating the tenancy agreement for non-payment of rent for the month of November 2023 after having properly served the Notice to the Tenant, pursuant to subsection 60.(1) of the *Act*. The Officer further notes that the Tenant was late paying for the month of December 2023 as well.

- [16] Subsection 60.(4) and (5) of the *Act* state:

60.(4) *Tenant may dispute notice or pay unpaid rent*

Within 10 days after receiving a notice of termination under this section, the tenant may

- (a) *pay the overdue rent, in which case the notice of termination has no effect; or*
- (b) *dispute the notice of termination by making an application to the Director under section 75.*

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.***

[Emphasis added].

- [17] The Officer notes that the Landlord served the Notice on the Tenant by email on November 8, 2023. The Officer notes that the email records dated November 17, 2023 show that the Tenant was aware of the Notice and understood that she was behind on rent.
- [18] Pursuant to subsection 60.(4) of the *Act*, the Tenant had until November 18, 2023 to either invalidate the Notice by paying the rent owing, or file an application with the Director to dispute the Notice. Subsection 60.(4) and (5) of the *Act* state that if a tenant does not pay rent or file the application within 10 days, the tenant is deemed to have accepted the end of the tenancy and shall vacate by the stated vacate date in the notice of termination.
- [19] The Officer finds that the Tenant did not pay the rent owing or file an application to set aside the Notice within 10 days from receiving the Notice. The Tenant is therefore deemed to have accepted the Notice pursuant to sub-subsection 60.(5)(a) of the *Act*, and is directed to vacate the Residential Property pursuant to sub-subsection 60.(5)(b) of the *Act*.
- [20] While the Tenant did pay rent owing for November 2023 on December 14, 2023, and rent owing for December 2023 on December 16, 2023, this was well past the 10-day period in which full payment of rent owing may invalidate the Notice pursuant to sub-subsection 60.(4)(a) of the *Act*.
- [21] The Officer further finds that the Tenant was overholding the Residential Property by continuing to occupy it after the listed vacate date in the Notice of December 1, 2023, without having paid rent.
- [22] The Officer notes that the email records show that the Landlord did not acquiesce to the Tenant's late payments. Rather, the Landlord reminded the Tenant of the 10-day timeline by which the Tenant must pay rent to invalidate the Notice. The Officer finds that the Landlord's acceptance of late rent payments was not a waiver of the Notice or a reinstatement of the tenancy, pursuant to subsection 74.(2) of the *Act*, which states:

74.(2) **Acceptance of rent**

The acceptance by a landlord of arrears of rent or compensation for use or occupation of the rental unit after notice of termination of tenancy has been given does not operate as a waiver of the notice, as reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree in writing.

- [23] Sub-subsections 51.(4)(b) and 85.(1)(b) 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.*

85.(1) **Powers of the Director**

After hearing an application the Director may make an order

(f) *directing a tenant to vacate the rental unit on a specified date.*

[24] The Officer finds that the Landlord has established grounds for terminating the tenancy agreement pursuant to subsection 60.(1) of the *Act*. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on January 4, 2024. The Tenant shall vacate the Residential Property by this time and date.

Conclusion

[25] The Notice is valid and the Application is allowed.

[26] The tenancy agreement between the parties shall terminate effective **5:00 p.m. on January 4, 2024**. The Tenant shall vacate the Residential Property by this time and date.

[27] **Order LD23-615 will be served on the parties by e-mail on December 27, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective **5:00 p.m. on January 4, 2024**. The Tenant shall vacate the Residential Property by this time and date.
- B. A certified copy of Order LD23-615 may be filed in the Supreme Court and enforced by Sheriff Serviced as permitted by the *Act*.

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

(sgd.) Colin Trewin

Colin Trewin
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.