

Introduction

- [1] On December 12, 2023, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking to request the Tenant vacate the Residential Property and to order the Sheriff to put the Landlord into possession of the Residential Property.
- [2] Attached to the Application was a *Notice of Termination by Lessor of Rental Unit* (Form 4) (the "Notice") dated September 20, 2023, effective October 31, 2023. The Notice was given to the Tenant for the following reasons:

You have not paid your rent in the amount of \$202.00, which was due on the 1st day of December 2022.

You or persons admitted to the premises by you have conducted yourself/themselves in a manner as to interfere with the possession, occupancy, or quiet enjoyment of other lessees.

An act or omission on your part or on the part of a person permitted in or on the residential premises/property by you has seriously impaired the safety or lawful right or interest of me or other lessees in the residential property.

- [3] The Particulars of the Notice also stated the Tenant has been habitually late with rent payments.
- [4] The Notice of Hearing was properly served in accordance with subsection 100.(1) of the *Act*. The Landlord was required to serve the Evidence Package but she stated she did not see the email request to do so from the Rental Office.
- [5] On January 9, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Representative and a Landlord witness participated in the hearing. The Tenant did not participate in the hearing. The Officer notes that the Tenant had received the Notice of Hearing and was aware of the date and time of the hearing.

Issue to be Decided

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

Summary of the Evidence

- [6] In May 2020, the parties entered into a written month-to-month tenancy agreement for the Residential Property, which consists of a mobile home situated in a mobile park (the "Park"). The Tenant owns the mobile home and the Landlord owns the property. Rent is \$202.00 due on the first day of the month. A security deposit was not required.

Landlord's Evidence and Submissions

- [7] The Landlord submitted several pages of documents into evidence including a written submission, rental ledger, letters from other residents of the Park, and messages between the parties.
- [8] The Tenant has been late in paying rent every month between July 2022 and August 2023. The Tenant did not pay rent in December 2022 and this caused him to be behind one month's rent every month until October 2023. In October 2023 the Tenant got caught up on rent but the Tenant has not paid rent for January 2024.

- [9] The Tenant is allowing ("A.S.") to attend the rental unit but A.S. was served a no trespassing order by police which prohibits A.S. from being in the Park. A.S. was evicted from the Park in July 2022 and the no trespassing order was served in August 2022. A.S. is causing problems in the Park by yelling and fighting and police have been called to the Park several times because of the actions of A.S. The Tenant has been warned about this behaviour and not to allow A.S. into the rental unit.
- [10] In October 2023, A.S. caused damage to the inside of the rental unit and police were called as a result. On October 19, 2023, three people were reported missing after they had left the rental unit and police had to search the Park as a result. Several police officers were required to search the Park to try to locate the individuals which disturbed other residents of the Park.
- [11] R.V. stated he agreed with what the Landlord testified about the Tenant and A.S. He lives near the Tenant and has observed what has been happening at the rental unit. He has observed police at the Tenant's residence on several occasions. R.V. has observed A.S. intoxicated in R.V.'s yard and he has observed A.S. yelling and screaming outside the rental unit.
- [12] Two letters submitted from other residents of the Park stated that they have observed individuals partying at the rental unit and they can hear loud vehicles, fighting, and screaming. They have been awoken by the noise and police presence at the rental unit. The residents stated this is occurring on a regular basis.

Tenant's Evidence and Submissions

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

Analysis

Issue i: Does the Tenant have to vacate the Residential Property due to the Notice?

- [14] The Landlord's reasons for terminating the tenancy agreement are pursuant to subsections 60.(1), 61.(1)(b) and (d), of the *Act*, which state:

Landlord's notice for non-payment of rent

60.(1) 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.

Landlord's notice for cause

61.(1) 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;

(d) the tenant or a person permitted on the residential property by the tenant has
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
(iii) put the landlord's property at significant risk.

- [15] The Officer does not find that the Landlord has established that the Tenant has contravened subsection 60.(1) of the *Act*. The Notice states that the Tenant has failed to pay rent for December 2022. However, the evidence establishes that the Tenant paid rent for December 2022 in January 2023, but this caused the Tenant to be behind one month's rent every month until October 2023.
- [16] The Officer finds the Landlord has provided sufficient evidence, specifically the undisputed testimony of the Representative, the testimony of the Landlord's witness, and the Landlord's documentary evidence, to establish that the Tenant has contravened subsections 61.(1)(b) and 61.(1)(d) of the *Act*.

Deeming

- [17] Subsections 61.(5) and (6) of the *Act* state:

Tenant may dispute notice

61.(5) A tenant may dispute a notice of termination under this section by making an application to the Director under section 75 within 10 days after the date the tenant receives the notice.

Tenant presumed to accept notice

61.(6) Where a tenant who has received a notice of termination under this section does not make an application to the Director in accordance with subsection (5) 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.*

- [18] The Landlord served the Notice on the Tenant on September 20, 2023, and the Tenant had until September 30, 2023, to file an application with the Director to dispute the Notice. Subsection 60.(6) of the *Act* states that if a tenant does not 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. The Officer finds that the Tenant did not file an application to set aside the Notice within 10 days and is therefore deemed to have accepted the Notice.
- [19] Subsubsections 51.(4)(b) and 85.(1)(b) of the *Act* state:

Landlord's right to possession restricted

51.(4) 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.*

Powers of the Director

85.(1) After hearing an application the Director may make an order

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

- [20] The Officer finds that the Landlord has established valid grounds for terminating the tenancy agreement pursuant to subsections 61.(1)(b), 61.(1)(d), and 61.(6) of the *Act*. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on February 12, 2024. The Tenant shall vacate the Residential Property by this time and date.

Conclusion

- [21] The Application is allowed.
- [22] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on February 12, 2024. The Tenant shall vacate the Residential Property by this time and date.
- [23] The Tenant is responsible for paying rent for the days the Residential Property is occupied until the Tenant vacates.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on February 12, 2024. The Tenant shall vacate the Residential Property by this time and date.
- B. The Tenant is responsible for paying rent for the days the Residential Property is occupied until the Tenant vacates.
- C. 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 12th day of January, 2024.

(sgd.) Mitchell King
Mitchell King
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.