

Introduction

- [1] On January 15, 2024, the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The purpose of the Application is to dispute an Eviction Notice.
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the “Notice”) dated January 6, 2024, effective January 16, 2024. The Notice was given to the Tenant for the following reasons:
- You have not paid your rent in the amount of \$2400.*
You have not paid electrical utilities of \$400.
You are repeatedly late in paying rent.
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [4] On February 2, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlord and the Tenant participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [5] On September 27, 2023, the parties entered into a written fixed-term tenancy agreement for the Residential Property. Rent is \$1,200.00 due on the 27th day of the month. A security deposit of \$1,200.00 was required and paid.

Landlord’s Evidence and Submissions

- [6] The Landlord submitted several pages of documents into evidence including the tenancy agreement and written submissions.
- [7] The Landlord stated the Tenant was supposed to put the electricity into his own name but did not. The Landlord had a bill of over \$1,100.00 for electricity. The Tenant did pay \$500.00 of the electricity bill but the current balance of electricity is \$613.00. Electricity is not included in the tenancy agreement and is the responsibility of the Tenant.
- [8] The Tenant has not paid rent for November 2023, December 2023, or January 2024, totaling \$3,600.00. He stated he has been in constant communication with the Tenant regarding the outstanding rent and electricity bills, but the Tenant has not made those payments.

Tenant’s Evidence and Submissions

- [9] The Tenant submitted documents showing a \$500.00 payment to the Landlord on December 28, 2023, for electricity. The Tenant agreed with the Landlord about the amount of money owed. The Tenant stated he is having financial difficulties. He stated he wishes to stay in the rental unit for as long as possible until he can find a new place to live.

Analysis

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

[10] The Officer begins by referencing the relevant law for the Application. The *Act* states:

60. Landlord's notice for non-payment of rent

(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.*

(6) *A landlord may treat unpaid utilities as unpaid rent and may give a notice of termination under this section where*

- a. *A tenancy agreement requires the tenant to pay utility charges to the landlord; and*
- b. *The utility charges are unpaid more than one month after the tenant is given a written warning.*

61. Landlord's notice for cause

(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.*

[11] Subsection 19.(1) of the *Act* states:

19. Tenant shall pay rent when due

(1) *A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.*

[12] In such applications where there is a dispute over an eviction notice it is the landlord's burden to prove, on a balance of probabilities, their reason(s) for terminating the tenancy agreement. This means the landlord must provide the decision-maker with sufficiently clear and convincing evidence to prove their claim(s).

[13] After reviewing the documentary evidence and the testimony of the parties, the Officer finds that the Landlord has provided sufficient evidence to establish that the Tenant has breached subsection 60.(1) of the *Act* by failing to pay rent for November 2023, December 2023, and January 2024 and by failing to pay the required electric bills. The Officer notes that electricity is not an included service in the tenancy agreement as it states "The Tenant will cover any costs for electricity and heating."

[14] The Officer does not find that the Landlord has provided sufficient evidence to establish that the Tenant has breached subsection 61.(1)(b) of the *Act* by being repeatedly late in paying rent. As the Landlord has already established the Tenant has failed to pay rent for three consecutive months, the Tenant cannot be considered repeatedly late in "paying" rent, as the rent has not been paid.

[15] The Officer finds that based on the evidence presented the Landlord has established valid grounds for terminating the tenancy agreement. The Notice is valid and the Application is denied.

Conclusion

- [16] The Notice is valid and the Application is denied.
- [17] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on February 16, 2024. The Tenant and all occupants shall vacate the Residential Property by this time and date.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on February 16, 2024. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- B. 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 9th day of February, 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.