

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 pursuant to subsection 61.(5) of the *Act*.
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated January 8, 2024, effective February 28, 2024. The Notice was given to the Tenant for the following reason:
- 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 7, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord Representative 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] In May of 2020, the Tenant and a prior landlord entered into a verbal month-to-month tenancy agreement for the Residential Property. The Landlord bought the property in April 2022 and the tenancy agreement continued. Rent is \$2,200.00 due on the 1st day of the month. A security deposit of \$2,200.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord submitted several pages of documents into evidence including banking documents and a submission written by the Tenant dated January 12, 2024.
- [7] The Landlord stated the Tenant has been repeatedly late in paying rent eight times between May 2023 and January 2024:
- a. The Tenant paid rent late in 2024 on: January 8;
 - b. The Tenant paid rent late in 2023 on: December 4, November 3, October 3, September 5, July 4, June 2, and May 2. He stated there were late payments as well in 2022 and he has communicated with the Tenant regarding the late payments.

Tenant's Evidence and Submissions

- [8] The Tenant submitted several pages of documents into evidence including a written submission, reference letters from previous landlords, banking documents, and messages between the Tenant and the property manager.
- [9] The Tenant acknowledged she was late the dates the Representative stated. She pays by e-transfer and in May she sent the payment to an old email address and re-sent it the next day once she realized the mistake. In July she told the property manager she would be late and he stated it would be okay. A copy of the property manager's text message was submitted into evidence.

- [10] During the summer her son got injured and she had to take time off work to look after him, so some of her payments were a few days late. She stated she was on time in August and February. She did not realize how important it was to the Landlord to have the payments in on the first day of the month, as she stated it was never brought up to her.
- [11] The Tenant stated she sent in reference letters from previous landlords and they acknowledged she was a good Tenant and was not late with rent. She stated this past year she had some difficulties but she always paid the rent within a few days of the due date. She stated she is willing to change her payment method, such as to post-dated cheque or another method approved by the Landlord, so this issue does not re-occur.

Analysis

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

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

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.

- [13] 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).

- [14] In Order LR23-66 the Island Regulatory and Appeals Commission ("the Commission") stated:

"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."

- [15] After reviewing the documentary evidence and the testimony of the parties, the Officer finds that the Landlord has provided sufficient evidence, specifically the submitted banking documents showing the late rent payments, to establish that the Tenant has breached subsection 60.(1)(b) of the *Act*. However, the Officer amends the effective date and the tenancy agreement shall terminate effective 5:00 pm on February 29, 2024.

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 29, 2024. The Tenant 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 29, 2024. The Tenant 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 15th 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.