

Introduction

- [1] On January 23, 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. There were other issues selected on the Application but the Tenant stated all he wanted to deal with was the eviction notice for the unpaid rent.
- [2] Attached with the Application was an undated *Eviction Notice* (Form 4(A)) (the "Notice"), effective January 15, 2024. The Notice was given to the Tenant for the following reason:
- You have not paid your rent in the amount of \$1000 for September 2023.*
- [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 15, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant participated in the hearing, however, the Landlord did not participate.

Issue to be Decided

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

Summary of the Evidence

- [5] In 2022, the parties entered into a written month-to-month tenancy agreement for the Residential Property. Rent is \$1,000.00 due on the 1st day of the month. A security deposit of \$1,000.00 was required and paid.

Tenant's Evidence and Submissions

- [6] The Tenant submitted several pages of documents into evidence including banking documents and proof of service messages sent to the Landlord. The Tenant stated he was served an eviction notice for failing to pay rent for September 2023. He cannot remember the date he was served and there is no date of service on the eviction notice.
- [7] The Tenant submitted banking documents into evidence showing that the rent was taken out of his bank account on September 1, 2023, by the Landlord. He has tried to contact the Landlord but his messages do not go through and he thinks the Landlord has blocked his number.

Landlord's Evidence and Submissions

- [8] The Landlord did not participate in the hearing or submit any evidence.

Analysis

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

- [9] 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.*

[10] 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.*

[11] 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).

[12] After reviewing the documentary evidence and undisputed testimony of the Tenant, the Officer finds that the Landlord has not provided sufficient evidence to establish that the Tenant has breached subsection 60.(1) of the Act by failing to pay rent for September 2023. The Officer notes that the banking documents submitted by the Tenant show that rent was paid for September 2023.

[13] The Officer finds that based on the evidence presented the Landlord has not established valid grounds for terminating the tenancy agreement. The Notice is not valid and the Application is allowed.

Conclusion

[14] The Notice is not valid and the Application is allowed.

[15] The tenancy agreement between the parties shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

A. The tenancy agreement between the parties shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 16th 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 **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.