

Introduction

- [1] On February 2, 2024, the Landlords filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The purpose of the Application is to request the Tenants vacate the rental unit and to order the Sheriff to put the Landlords into possession of the rental unit pursuant to the *Residential Tenancy Act* (the "Act").
- [2] Attached with the Application were two *Eviction Notices* (Form 4(A)) (the "Notices"), effective February 1, 2024, (the "First Notice") and February 26, 2024, (the "Second Notice"). The Notices were given to the Tenants for the following reasons:

First Notice:

You have not paid the security deposit;

You have permitted an unreasonable number of occupants in the rental unit;

You or someone you have allowed on the property have disturbed or endangered others;

You or someone you have allowed on the property have engaged in illegal activity on the property.

Second Notice:

You have not paid your rent in the amount of \$1500.00.

- [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 22, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlords participated however the Tenants did not participate in the hearing.

Issue to be Decided

- i. Do the Tenants have to vacate the Rental Unit due to the Notices?

Summary of the Evidence

- [5] On October 1, 2023, the Tenants and the Landlords entered into a written month-to-month tenancy agreement for the rental unit, which is situated in a four-plex and is a part of a 12-unit complex (the "Residential Property"). Rent is \$1,500.00 due on the 1st day of the month. A security deposit of \$1,000.00 was required but the Landlords are unsure if the totality of it had been paid.

Landlords' Evidence and Submissions

- [6] The Landlords submitted several documents into evidence including a written submission, photographs of the Residential Property, and written submissions from other tenants. The Landlords stated rent has not been paid for February 2024 in the amount of \$1,500.00. They stated the Tenants may have finally paid the security deposit in full but they could not confirm this at the time of the hearing.
- [7] The Landlords stated there is suspected drug activity occurring in and around the rental unit. There is a high volume of traffic which comes and goes from the rental unit on a continuous basis. Drug paraphernalia has been found discarded in the yard and washing machines, people are knocking on other tenants' doors looking for the Tenants, and individuals associated to the Tenants have been observed smoking illegal drugs in the yard.

- [8] Police, Fire, and EMS, are at the rental unit on a regular basis responding to drug overdoses and drug activity. The Tenants allowed another individual to move in with them but that person was smoking drugs in the driveway and the police were often looking for that individual. The Landlords had the police issue a stay-away order to that individual so she would not return to the Residential Property.
- [9] The Landlords submitted photographs of two vehicles which have been associated to the Tenants. One vehicle had an individual under the influence sitting in the driveway for a period of time, with one of the Tenants inside of it. When other tenants witnessed open alcohol in the vehicle, the driver attempted to take off erratically but hit the telephone wire. Another vehicle is owned by an individual who lives in his vehicle and has parked it in the yard when he visits the Tenants, which makes the other tenants uncomfortable.
- [10] Two other tenants have written to the Landlords stating the Tenants are loud, they put garbage in other tenants' garbage cans, and leave garbage in the back of their truck which the birds get into. There is a large volume of traffic which comes and goes from the rental unit day and night, police are often at the rental unit, and people are often at the property looking for the Tenants or the Tenants' guests.

Tenants' Evidence and Submissions

- [11] The Tenants did not submit any evidence or participate in the hearing.

Analysis

Issue i: Do the Tenants have to vacate the Rental Unit due to the Notices?

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

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.*

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:*

(a) *the tenant does not pay the security deposit within 10 days of the date it is required to be paid under the tenancy agreement;*

(c) *there is an unreasonable number of occupants in the tenant's rental unit;*

(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;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant.

Unpaid Rent and Security Deposit

- [13] After reviewing the documentary evidence and the undisputed testimony of the Landlords, the Officer finds that the Landlords have provided sufficient evidence, specifically the undisputed testimony of the Landlords, to establish that the Tenants have breached subsection 60.(1) of the *Act* by failing to pay rent for February 2024 in the amount of \$1,500.00. The Officer does not find the Landlords have established the Tenants have failed to pay the security deposit, as the Landlords could not confirm if the security deposit had been paid in full or not at the time of the hearing.

Interfere with or Disturb Others

- [14] Further, the Officer finds that the Landlords have provided sufficient evidence, specifically the undisputed testimony of the Landlords. The written submissions of the other tenants, although not affirmed, assist to establish that the Tenants have breached subsection 61.(1)(d) of the *Act*. The Officer finds the Landlords have established the Tenants or persons permitted on the Residential Property by the Tenants: have significantly interfered with or unreasonably disturbed other occupants and the Landlords of the Residential Property, seriously jeopardized the health or safety or lawful right or interest of the Landlords and other occupants, and put the Landlords' property at significant risk.

Illegal Activity

- [15] Further, the Officer finds that the Landlords have provided sufficient evidence, specifically the undisputed testimony of the Landlords. The written submissions of the other tenants, although not affirmed, assist to establish that the Tenants have breached subsection 61.(1)(e) of the *Act*. The Officer finds the Landlords have established the Tenants or persons permitted on the Residential Property by the Tenants: have engaged in illegal activity that has caused or is likely to cause damage to the Landlords' property, has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the Residential Property, or has jeopardized or is likely to jeopardize a lawful right or interest of the Landlords or another occupant.

Unreasonable Number of Occupants

- [16] The Officer does not find that the Landlords have provided sufficient evidence to establish that the Tenants have breached subsection 61.(1)(c) of the *Act*. The Officer does not find the Landlords have established when an unreasonable number of people were in the rental unit or how many people the Landlords consider unreasonable.

Deeming

[17] Subsections 60.(4) and (5) and 61.(5) and (6) of the *Act* state:

Tenant may dispute notice or pay unpaid rent

60.(4) 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.*

Tenant presumed to accept notice

60.(5) 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.*

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 Landlords served the First Notice on December 20, 2023, and the Second Notice on February 6, 2024. The Tenants had 10 days to pay the rent and/or file an application with the Director to dispute the Notices. The *Act* states that if a tenant does not pay the rent and/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. The Officer finds that the Tenants did not pay the rent and/or file an application to set aside the Notices within 10 days and are therefore deemed to have accepted the Notices.

[19] Subsubsections 51.(4)(b) and 85.(1)(f) 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.*

Conclusion

- [20] The Notices are valid and the Application is allowed.
- [21] The tenancy agreement between the parties shall terminate effective March 4, 2024. The Tenants 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 in March 4, 2024. The Tenants 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 23rd 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.