

## Introduction

- [1] On January 24, 2024, the Landlord 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 Tenant vacate the rental unit and to order the Sheriff to put the Landlord into possession of the rental for nonpayment of rent pursuant to section 60.(1) the *Residential Tenancy Act* (the "Act") and for the Tenant to pay the outstanding rent.
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the "Notice"), effective January 23, 2024. The Notice was given to the Tenant for the following reason:
- You have not paid your rent in the amount of \$1050.*
- [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 29, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two Landlord Representatives participated however the Tenant did not participate in the hearing.

## Issues to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?
- ii. Does the Tenant owe rent to the Landlord?

## Summary of the Evidence

- [5] In 2022 the Tenant and the Landlord entered into a written month-to-month tenancy agreement for the Residential Property. Rent is \$1,081.00 due on the 1st day of the month. A security deposit of \$1,000.00 was required and paid.

### Landlord's Evidence and Submissions

- [6] The Representatives submitted a copy of a January 2024 rental ledger into evidence showing the Tenant did not pay rent for January. The Representatives stated the Tenant has been late in paying rent every month since May 2023. The Tenant owed \$1,050.00 for December 2023 and \$1,081.00 for January 2024 when the Tenant was served with the Notice on January 3, 2024. The Representatives filed the Application on January 24, 2024, and after that date the Tenant paid \$550.00 + \$1,081.00, which was still not the full amount owed.
- [7] On February 28, 2024, the Tenant paid another \$1,081.00, but as of the date of the hearing, the Tenant still owed \$500.00 in rental arrears. The Representatives stated they are still seeking the outstanding rent owing and for the Tenant to vacate the rental unit.

### Tenant's Evidence and Submissions

- [8] The Tenant did not submit any evidence and did not participate in the hearing.

## 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:

**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.*

**Tenant may dispute notice or pay unpaid rent**

(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**

(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.*

[10] After reviewing the documentary evidence and undisputed testimony of the Representatives, the Officer finds that the Representatives have provided sufficient evidence, specifically the rental ledger and the testimony of the Representatives, that the Tenant failed to pay rent for December 2023, January 2024, and February 2024, on the day that rent was due. The Officer finds that based on the evidence presented the Landlord has established valid grounds for terminating the tenancy agreement pursuant to subsection 60.(1) of the *Act*.

### Deeming

[11] The Landlord served the Notice to the Tenant on January 3, 2024, and the Tenant had 10 days to pay the rent or to file an application with the Director to dispute the Notice. Subsection 60.(5) of the *Act* states that if a tenant does not pay the rent or file an 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. The Officer finds that the Tenant did not pay the rent or file an application to set aside the Notice within 10 days and is therefore deemed to have accepted the Notice.

**Issue ii: Does the Tenant owe rent to the Landlord?**

[12] The Officer notes that the Tenant had paid some of the rental arrears after being served with the Application, however the Officer finds the Landlord has provided sufficient evidence to establish that the Tenant still owes \$500.00 to the Landlord in rental arrears for February 2024.

**Conclusion**

[13] The Notice is valid and the Application is allowed.

[14] The tenancy agreement between the parties shall terminate effective 5:00 pm on March 13, 2024. The Tenant shall vacate the Residential Property by this time and date.

[15] The Tenant shall pay the Landlord \$500.00 on or before April 13, 2024.

**IT IS THEREFORE ORDERED THAT**

- A. The tenancy agreement between the parties shall terminate effective 5:00 pm on March 13, 2024. The Tenant shall vacate the Residential Property by this time and date.
- B. The Tenant shall pay the Landlord \$500.00 on or before April 13, 2024.
- 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 6th day of March, 2024.

(sgd.) Mitchell King

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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.