

## Introduction

- [1] On February 8, 2024 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks that the Tenants vacate the Rental Unit, and to order the Sheriff to put the Landlord into possession of the Rental Unit pursuant to clause 51(4)(b) of the *Residential Tenancy Act* (the "Act").
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated January 11, 2024 for effect February 1, 2024. The Notice was given to the Tenants for the following reasons:
- i. *You have not paid your rent in the amount of \$1,240.00;*
  - ii. *You have not paid the security deposit;*
  - iii. *You are repeatedly late in paying rent.*
- [3] All relevant documents (including the Application, *Notice of Hearing* and *Evidence Package*) were properly served in accordance with clause 100(1) of the *Act*.
- [4] On February 22, 2024 a teleconference hearing was held at 1:00 p.m. before a Residential Tenancy Officer (the "Officer"). A representative appeared on behalf of the Landlord (the "Representative"). One of the Tenants appeared, on their own behalf, and representing the Tenants.
- [5] **At the end of the hearing, the parties agreed, and with the assistance and instruction from the Officer to hold deliberating and issuing an Order until end of day March 7, 2024. The parties agreed that if the Tenants pay the full outstanding balance of rental arrears and security deposit before end of day March 7, 2024, then the Representative would withdraw the Application.**

## Issue to be Decided

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

## Summary of the Evidence

- [6] On December 10, 2023 the parties entered into a verbal month-to-month tenancy agreement for the Rental Unit. The Rental Unit is situated in a 17-unit motel (the "Residential Property"). Rent is \$1,240.00 due on the 10<sup>th</sup> day of each month. A security deposit of \$1,000.00 was required, however, only \$500.00 was paid.

### Landlord's Evidence and Submissions

- [7] The Representative testified that the Tenants are regularly late with paying the rent and still owe half of the security deposit. The Representative testified that he served the Notice by hand delivering it to the Tenants on January 11, 2024. The Representative testified that on January 31, 2024 the Tenants paid \$300.00 and on February 20, 2024 paid \$400.00. The Representative testified that the Tenants owe \$540.00 for the month of January 10, 2024 to February 9, 2024, and owe \$1,240.00 from February 10, 2024 to March 9, 2024. The Representative testified that the Tenants also owe \$500.00 for the security deposit.
- [8] The Landlord agreed to give the Tenants two weeks (ending March 7, 2024) to pay the outstanding arrears and he would permit the Tenants to continue the tenancy.

- [9] On March 8, 2024 the Representative e-mailed the Rental Office with the following stated:

*“Hi there,  
The tenants in Unit 2 paid \$1,780.00 for rent on Tuesday March 5, 2024.  
They refuse to pay \$500 for damage deposit as they promised.  
They should go, thank you.”*

- [10] The Representative attached to the e-mail a copy of the e-transfer of \$1,780.00 received from the Tenants.

### **Tenants' Evidence and Submissions**

- [11] The Tenant did not dispute the Representative's testimony and admitted to owing the rent arrears and half the security deposit. The Tenant testified that they were having financial hardship, but intended to pay the outstanding arrears. The Tenant testified that they intended to also pay the next months' rent early.

- [12] The Tenant agreed that the outstanding arrears would be paid before March 7, 2024.

### **Analysis**

- [13] The Application is made in accordance with clause 75 of the *Act* and seeks an order directing the Tenants to vacate the Rental Unit and ordering the Sheriff to put the Landlord into possession of the Rental Unit. The relevant law is as follows:

**51. Termination only in accordance with Act**

- (1) *A tenancy shall be terminated only in accordance with this Act.*

**Landlord's right to possession restricted**

- (4) *A landlord shall not retain possession of a rental unit unless*
- (a) *the tenant has vacated the rental unit or has abandoned the rental unit in accordance with section 42; or*
  - (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.*

- [14] On January 11, 2024 the Representative served the Tenants with the Notice seeking to terminate the tenancy agreement pursuant to clauses 60(1) and 61(1)(a) and (b) of the *Act*, which 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.*

**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;*
  - (b) *the tenant is repeatedly late in paying rent.*

- [15] In such matters it is the landlord's burden to prove, on a balance of probabilities, any and all reasons alleged in the Notice, and any and all claims made in the Application. This means the Representative must provide the decision-maker with sufficiently clear, convincing and cogent evidence to support their claims.

### **The Notice – Cause for Eviction**

- [16] The Officer finds that the undisputed evidence from the parties establishes that the Tenants did not pay rent on the date it was due and did not pay the remaining balance of the security deposit. The Officer finds that the Representative properly served the Notice and had valid grounds to terminate the tenancy agreement pursuant to clause 60(1) and 61(1)(a) of the Act. The Officer notes that the repeatedly late payment of rent allegation was not established at the time of the hearing.

### **Deeming Provisions**

- [17] Clauses 60(4), (5) and 61(5) and (6) of the Act state:

#### ***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.*

#### ***Tenant may dispute notice***

- (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***

- (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 evidence establishes that the Representative served the Notice on January 11, 2024. The Tenants had (10) ten days to file an application (Form 2(A)) with the Rental Office to dispute the Notice and/or the Tenants could have paid the rental arrears owed. The evidence establishes that the Tenants did neither. The Officer notes that the Tenants did make two partial payments on January 31, 2024 and February 20, 2024 to the Landlord, however, both payments were outside the (10) ten days after service of the Notice. Therefore, the Tenants are **deemed** to have accepted the Notice and to vacate the Rental Unit by the effective date on the Notice.

### **The Extension and Agreement**

- [19] The Officer notes that at the end of the hearing the Tenants suggested that they would be able to pay their outstanding arrears in “two weeks”. The Representative agreed to give the Tenants “two weeks” to pay the outstanding arrears, and he would permit them to stay at the Rental Unit and continue the tenancy.
- [20] The Officer provided the parties with clear instructions as to the details of the extension and agreement in place. The Officer stated as follows during the hearing:

**Beginning of the Timestamp at the hearing: 31 minutes and 30 seconds.**

**The Officer:** “Tenant, if you can get paid up by March 7 you get to stay, if you guys don’t (referring to the Tenants), I’ll have to evict shortly after the 8<sup>th</sup>. Okay?”

**The Tenant:** “Okay”

**The Officer:** “So I will give March 7, 2024 the deadline, and to be clear, you (referring to the Tenant) owe \$540.00 for the outstanding rent for January, uh, \$1,240.00 to March (referring to February 10 to March 9 rent), and then the \$500.00 security deposit that is outstanding, so...”

**The Tenant:** “Yeah”

**The Officer:** “Bear with me for a second, my math has failed me, so \$2,280.00 in total, does that sound right [“the Representative”]?”

**The Representative:** “Yep.”

**The Officer:** “So, Tenant, I know that is a large sum of money but um I think this is a fair alternative to what could happen, so you have until March 7 to pay \$2,280.00, uh unless you and the Representative come to a different number or a little more leniency, just let me know, if that changes I’ll need both parties to confirm that, but I would expect that on or before March 7 the Representative will contact us (referring to the Rental Office) either he was paid \$2,280.00 or he hasn’t and I’ll proceed writing my decision based on that information, okay?”

**The Tenant:** “Okay”

**The Officer:** “There’s no dispute about the facts that I have just laid out?”

**The Tenant:** “No.”

**The Officer:** “Fair? Okay.”

- [21] The Officer finds that on March 8, 2024 the Representative advised the Rental Office that the Tenants paid the outstanding arrears in the amount of \$1,780.00 on March 5, 2024. However, the Tenants have not paid the \$500.00 outstanding for the security deposit. The Officer notes that the \$500.00 outstanding security deposit was clearly part of the agreement between the parties. The Tenants agreed to pay a total of \$2,280.00 on or before March 7, 2024. The Officer confirmed numerous times throughout the hearing and the Tenant on two occasions agreed that \$2,280.00 was owed. **Therefore, the Officer finds that the Tenants have not upheld their side of the agreement with the Representative.**
- [22] The Officer finds that the Landlord had valid grounds to terminate the tenancy agreement, and that the Tenants are deemed to have accepted the Notice. The Officer concludes that the Tenants did not uphold their agreement with the Representative as detailed at the hearing. Therefore, the Officer finds that the Notice is valid and the Application is allowed.
- [23] Clause 85(1)(f) of the *Act* states:
- 85. Powers of the Director**  
(1) *After hearing an application, the Director may make an order*  
(f) *directing a tenant to vacate the rental unit on a specified date.*
- [24] The Officer finds that the tenancy shall end, and the Tenants shall vacate the Rental Unit on or before **March 15, 2024 at 5:00 p.m.**

## Conclusion

- [25] The Notice is valid and the Application is allowed.
- [26] The tenancy shall end, and the Tenants shall vacate the Rental Unit on or before **March 15, 2024 at 5:00 p.m.**

## IT IS THEREFORE ORDERED THAT

- A. The tenancy shall end, and the Tenant shall vacate the Rental Unit on or before March 15, 2024 at 5:00 p.m.
- 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 8th day of March, 2024.

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(sgd.) Cody Burke  
Cody Burke  
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.