

Introduction

[1] On February 21, 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 Tenant and all occupants 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"). The Application also requests a monetary order for the Tenant to pay outstanding rent pursuant to clause 19.(1) of the Act, which is the subject of **Order LD24-088**.

[2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated January 24, 2024, effective February 13, 2024. The Notice was given to the Tenant for the following reason:

You have not paid your rent in the amount of \$1,770.42.

[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 March 7, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A representative appeared on behalf of the Landlord (the "Representative"). The Tenant did not participate in the hearing. The Tenant contacted the Rental Office on March 8, 2024, stating she thought the hearing was cancelled due to the weather.

Issue to be Decided

- i. Do the Tenant and all occupants have to vacate the Rental Unit due to the Notice?

Summary of the Evidence

[5] On May 1, 2023, the parties entered into a written month-to-month tenancy agreement for the Rental Unit. The Rental Unit is situated in a multi-unit building (the "Residential Property"). Rent is \$1,442.00 due on the first day of each month. A security deposit of \$1,400.00 was required and paid.

Landlord's Evidence and Submissions

[6] The Representative testified the Tenant notified the Representative she was moving out of the Rental Unit but her son would be remaining in the rental unit and paying the rent. The Representative stated he told the Tenant to have her son speak to him about potentially taking over the tenancy agreement. The Representative stated the Tenant's son has not spoken to him and there is rent owing for December 2023 for \$300.00, and January, February, and March 2023 in the amount of \$1,442.00 x 3, totaling \$4,626.00.

[7] The Representative stated he has observed the Tenant's son come and go from the Rental Unit. He has also observed the Tenant coming and going from the rental unit and he is unsure if the Tenant actually moved out or not. The Representative submitted a copy of a rental ledger and e-transfer notices into evidence. The Representative stated he has received no updates from the Tenant or her son and he still considers the tenancy agreement with the Tenant in effect.

Tenant's Evidence and Submissions

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

Analysis

Issue i: Do the Tenant and all occupants have to vacate the Rental Unit due to the Notice?

- [9] The Application is made pursuant to clause 75 of the Act and seeks an order directing the Tenant and all occupants to vacate the Rental Unit and ordering the Sheriff to put the Landlord into possession of the Rental Unit. The Act states:

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.*

- [10] On January 24, 2024, the Representative served the Tenant with the Notice seeking to terminate the tenancy agreement pursuant to clause 60(1) 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.*

- [11] 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 and convincing evidence to support their claims.

The Notice – Cause for Eviction

- [12] The Officer finds that the undisputed evidence from the Representative establishes that the Tenant did not pay rent on the date it was due. The Officer finds that the Representative properly served the Notice and has valid grounds to terminate the tenancy agreement pursuant to clause 60(1) of the Act.

Deeming Provisions

- [13] Clauses 60(4) and (5) 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.*

[14] The evidence establishes that the Representative served the Notice on January 24, 2024. The Tenant had ten days to file an application (Form 2(A)) with the Rental Office to dispute the Notice and/or pay the rental arrears owed. The evidence establishes that the Tenant did neither. Therefore, the Tenant is **deemed** to have accepted the Notice and was required to vacate the Rental Unit by the effective date on the Notice.

[15] The Officer finds that the Landlord has valid grounds to terminate the tenancy agreement and that the Tenant is deemed to have accepted the Notice. The Notice is valid and the Application is allowed.

[16] 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.*

[17] The Officer finds that the tenancy shall end, and the Tenant and all occupants shall vacate the Rental Unit on or before **March 22, 2024, at 5:00 p.m.**

Conclusion

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

[19] The tenancy shall end, and the Tenant and all occupants shall vacate the Rental Unit on or before March 22, 2024, at 5:00 p.m.

[20] As noted above, the Landlord's monetary claim is the subject of Order LD24-088.

IT IS THEREFORE ORDERED THAT

- A. The tenancy shall end, and the Tenant and all occupants shall vacate the Rental Unit on or before March 20, 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 15th day of March, 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.