

## Introduction

- [1] On March 5, 2024, the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office").
- [2] The Application was filed pursuant to subsection 61.(5) of the *Residential Tenancy Act* (the "Act") to dispute an *Eviction Notice* (Form 4(A)) dated March 2, 2024, effective March 31, 2024, (the "Notice"). The Notice was given to the Tenant for the following reasons:

*You have not paid your rent in the amount of \$700;  
You have not paid the security deposit.*

- [3] All relevant documents (including the Application, Notice of Hearing, and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [4] On March 21, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Landlord Representative participated representing the Landlords and the Tenant participated representing himself.

## Issue to be Decided

- i. Does the Tenant have to vacate the Rental Unit due to the Notice?

## Summary of the Evidence

- [5] In August of 2023, the Tenant and the Landlords entered into a written month-to-month tenancy agreement for the Rental Unit, which consists of a room rental in a house (the "Residential Property"). Rent is \$700.00 due on the 1st day of the month. A security deposit of \$700.00 was required but not paid.

### Landlord's Evidence and Submissions

- [6] The Representative stated he wishes to evict the Tenant because the Landlords are planning on renovating the Residential Property and then selling it. He stated it will be harder to renovate the Residential Property if the Tenant is living in the Rental Unit. The Representative stated the other Landlord "Z.M." may reside in the Residential Property during renovations to oversee the work.
- [7] The Representative stated the Tenant did pay the outstanding rent after receiving the Notice. He stated the Tenant was required to pay a \$700.00 security deposit when he moved into the Rental Unit in August 2023, but the security deposit was never paid. He stated the parties did have an agreement that the Landlords would discount the Tenant's security deposit if the Tenant paid to have the Tenant's cats neutered, however the Landlords have never received a bill for this cost.
- [8] The Representative stated the Tenant's brother is also living in the Residential Property but the Landlords did not give the Tenant permission for his brother to move in. The Tenant's brother is not paying any rent and should not be living at the Residential Property.

### Tenant's Evidence and Submissions

- [9] The Tenant confirmed he paid the rent for March 2024 the day after receiving the Notice. The Tenant stated Z.M. had previously lived at the Residential Property with the Tenant but then Z.M. moved out leaving the Tenant the only occupant in the Residential Property. The Tenant had previously spoken to Z.M. about the security deposit and Z.M. told him not to worry about it. He stated the Landlords had never spoken to him about paying the security deposit until he received the Notice.
- [10] The Tenant stated he did have an agreement for a discount on the security deposit if he had his cats neutered, but he never had the procedure performed on the cats. He stated Z.M. gave him permission to allow his brother to stay in the Residential Property until his brother could find another place to live. The Tenant stated the Landlords are trying to evict him for renovations and to sell the property but the Landlords are using the security deposit as an excuse to get him evicted, which is not allowed under the *Act*.

### Analysis

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

- [11] The Officer begins by referencing the relevant law for the Application. As the Tenant has paid the rent for March 2024 within 10 days of receiving the Notice, only the matter of the security deposit requires a determination. The *Act* states:

**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.*

- [12] In 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).
- [13] The Tenant testified Z.M. told the Tenant not to worry about the security deposit and stated the Landlords did not bring up payment of the security deposit until he received the Notice. The Representative was not able to confirm if Z.M. had said this to the Tenant about the security deposit. The Officer notes that Z.M. did not participate in the hearing and that direct testimony from Z.M. would have assisted in the determination of this matter. Based on the evidence presented, the Officer finds that the Landlords agreed that a security deposit would not be required.
- [14] After reviewing the documentary evidence and testimony of the parties, the Officer does not find that the Landlords have provided sufficient evidence to establish that the Tenant has breached subsection 61.(1)(a) of the *Act* by not paying the security deposit within 10 days of the date it is required to be paid under the tenancy agreement.

**Conclusion**

- [15] The Notice is not valid and the Application is allowed.
- [16] The tenancy agreement continues in full force and effect.
- [17] This Order will be sent by email on March 28, 2024.

**IT IS THEREFORE ORDERED THAT**

- A. The Notice is not valid and the Application is allowed.
- B. The tenancy agreement continues in full force and effect.

**DATED** at Charlottetown, Prince Edward Island, this 28th day of March, 2024.

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(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.