

Introduction

- [1] On April 15, 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 vacate the Rental Unit, to order the Sheriff to put the Landlord into possession of the Rental Unit, and rent owing, pursuant to the *Residential Tenancy Act* (the "Act").
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated March 3, 2024, for effect March 20, 2024. The Notice was given to the Tenant for the following reasons:
- i. You have not paid your rent in the amount of \$2,600.00; and
 - ii. You have not paid the security deposit.

The Landlord also wrote on the Notice "*not pay rent for 4 month.*"

- [3] On May 14, 2024, at 1:00 p.m., a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord appeared representing himself. The Tenant did not participate in the hearing and did not have representation. The Officer called the Tenant and left a voicemail. The Officer waited until 1:10 p.m. and proceeded with the hearing in the Tenant's absence.
- [4] On May 16, 2024, the Tenant contacted the Rental Office on an unrelated matter. He stated he was not aware of this matter and stated he had not received the Notice of Hearing or Evidence Package. The Tenant confirmed his phone number and it was found that the Landlord provided the Rental Office with an incorrect phone number for the Tenant. The parties were notified the matter would be rescheduled so the Tenant could have the opportunity to participate in the hearing.
- [5] The Rental Office re-scheduled the matter for May 29, 2024, at 1:00 pm. An updated Notice of Hearing and Evidence Package were sent to the Tenant by Registered Mail through Purolator on May 23, 2024. Purolator indicated it was delivered to the Rental Unit on May 24, 2024, at 11:42 a.m. The Notice of Hearing and Evidence Package were emailed to the Landlord.
- [6] On May 29, 2024, at 1:00 p.m., a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and the Tenant participated in the hearing. The Tenant stated he had received the package from Purolator but that he was illiterate and unable to read what was in the package. The Officer explained the contents of the evidence package and explained what the hearing was about. The Tenant stated he wished to proceed with the hearing at that time.

Issues to be Decided

- i. Did the Landlord serve the Tenant to the Notice?
- ii. Does the Tenant owe the Landlord rent?

Summary of the Evidence

- [7] On November 1, 2023, the parties entered into an oral month-to-month tenancy agreement for the Rental Unit, which consists of the basement in a four-unit building. The parties disagreed on the amount for rent per month, with the Landlord stating it was \$800.00 and the Tenant stating it was \$555.00. The Landlord stated a security deposit was not required.

Landlord's Evidence and Submissions

- [8] The Landlord stated rent is \$800.00 per month but the Tenant only paid rent for the first two months. He stated he received \$1,400.00 for two months of rent from social assistance but he has not received any other money from the Tenant or social assistance. He stated the Tenant has not paid rent from January 2024 to May 2024, totaling \$4,000.00. The Landlord stated he served the Tenant the Notice in person, put it on the Tenant's door, and sent it to the Tenant's phone.

Tenant's Evidence and Submissions

- [9] The Tenant stated he never received a copy of the Notice from the Landlord. The Tenant stated that social assistance will only pay \$555.00 for rent and he disputed that rent is \$800.00. He stated when he moved into the Rental Unit in November 2023, he advised the Landlord that social assistance may not be able to start paying the rent right away and the Landlord may be out some rent. The Tenant stated the parties attended the social assistance office together in December or January and the Landlord was paid \$1,400.00 for three months of rent, which would be for January to March 2024.
- [10] The Tenant stated he paid rent for April 2024 plus another \$100.00 for internet, but has not paid rent for May 2024, as he had other expenses to pay for. The Tenant stated he has completed some work for the Landlord and the Landlord will not pay him for the work. He stated he is unable to access his social security cheques because the Landlord has the mailbox key.

Analysis

- [11] The Application seeks an order directing the Tenant to vacate the Rental Unit, ordering the Sheriff to put the Landlord into possession of the Rental Unit, and for the Tenant to pay outstanding rent. In such matters it is the landlord's burden to prove, on a balance of probabilities, the claims made in the Application. This means the landlord must provide the decision-maker with sufficiently clear and convincing evidence to support their claims. The Act states:

11.(1) Tenancy agreement in writing

A landlord shall prepare a written tenancy agreement in respect of a tenancy that is entered into on or after the date this Act comes into force.

19.(1) Tenant shall pay rent when due

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.(1) Landlord's notice for non-payment of rent

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.(1) Landlord's notice for cause

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.*

60.(4) Tenant may dispute notice or pay unpaid rent

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.*

Issue i – Did the Landlord serve the Notice to the Tenant?

- [12] The Notice was dated March 3, 2024, for effect March 20, 2024. The Officer notes that the effective date for the Notice should have been at least 20-days from the date of service for non-payment of rent, making the correct effective date March 23, 2024. The Landlord stated he served the Notice to the Tenant in person, put a copy on the Tenant's door, and sent a copy to the Tenant's phone. The Tenant denied receiving a copy of the Notice from the Landlord.
- [13] The Officer finds that based on the evidence presented, the Landlord has not established, on a balance of probabilities, that he had properly served a copy of the Notice to the Tenant. The Landlord has not provided any documentary evidence, such as a photograph of the Notice on the Tenant's door, or affirmed witness testimony, to establish that he had served a copy of the Notice to the Tenant.
- [14] The Officer further finds the Landlord has not established the Tenant has failed to pay the security deposit pursuant to clause 61.(1)(a) of the *Act*, as the Landlord stated a security deposit was not required. It is unclear why the Landlord selected this as a basis for termination.

Issue ii – Does the Tenant owe the Landlord rent?

- [15] The parties agreed they entered into an oral tenancy agreement on November 1, 2023, but disputed how much rent is each month. The parties agreed social assistance paid the Landlord \$1,400.00 for rent, but they disputed what months this payment covered.
- [16] The Officer finds that based on the evidence presented, the Landlord has not established that the Tenant owes the Landlord outstanding rent between November 2023 and March 2024. The Landlord has not provided any documentary evidence, such as receipts or a rental ledger, to establish how much rent is per month, when rent had been paid, or what months the \$1,400.00 rent payments covered.
- [17] The parties disagreed if rent was paid for April 2024 but the Tenant did acknowledge he did not pay rent for May 2024. However, as there was no evidence submitted that a notice of termination was served to the Tenant for non-payment of rent for April or May, or that an application was filed for rent owing for April or May, the Officer will not make a finding regarding these two months.
- [18] The Officer notes that a written tenancy agreement would have been of assistance in the determination of this matter. Clause 11.(1) of the *Act* requires a written tenancy agreement for any tenancy that was entered into after April 8, 2023. A written tenancy agreement would ensure both parties are clear on what the amount of rent is each month as well as any other obligations the parties agreed to pursuant to the *Act*.
- [19] After reviewing the documentary evidence and testimony of the parties, the Officer finds that the Landlord has not provided sufficient evidence to justify a termination of the tenancy agreement. The Officer finds that the Landlord has not established the Tenant owes rent to the Landlord, the Tenant failed to pay the security deposit, or that the Notice was properly served to the Tenant. The Officer finds that the Notice is invalid and the Application is denied.

Conclusion

- [20] The Notice is invalid and the Application is denied.
- [21] The tenancy agreement between the parties shall continue in full force and effect.
- [22] This Order will be mailed to the parties.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 4th day of June, 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 **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.