

Introduction

- [1] On April 25, 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 and to order the Sheriff to put the Landlord into possession of the Rental Unit, pursuant to the *Residential Tenancy Act* (the "Act"), which is the subject of this Order.
- [2] The Application also requests the Tenant to pay outstanding rent which is the subject of **Order LD24-168**.
- [3] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated April 5, 2024, for effect April 25, 2024. The Notice was given to the Tenant for the following reasons:
- i. You have not paid your rent in the amount of \$700.00; and
 - ii. You have not paid the security deposit.
- [4] On May 16, 2024, at 1:00 p.m., a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Landlord representative (the "Representative") and legal counsel for the Landlord appeared, representing the Landlord. The Tenant along with a Tenant Witness appeared representing the Tenant.

Issue to be Decided

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

Summary of the Evidence

- [5] On March 1, 2024, the parties entered into an oral month-to-month tenancy agreement for the Rental Unit, which consists of a room rental and shared common spaces. Rent is \$700.00 due on the first day of the month. A security deposit of \$700.00 was required to be paid, however the parties are disputing if it had been paid.

Landlord's Evidence and Submissions

- [6] The Representative stated that rent for March 2024 in the amount of \$700.00 was paid by the Tenant in cash. He stated the Tenant did not pay the security deposit or rent for April or May. The Representative stated if the Tenant wished to pay rent for April or May then it could be sent via e-transfer to the Landlord as opposed to paying cash to the Representative.

Tenant's Evidence and Submissions

- [7] The Tenant and Tenant Witness evidence is as follows. The Tenant paid rent for March 2024 and the security deposit in cash to the Representative but the Tenant was not provided with any receipts. The Tenant does not have any documentation to show that he paid the rent or security deposit. The Tenant did not pay rent for April or May because the Representative refused to provide receipts. The Tenant will e-transfer April's rent and the Landlord can use the security deposit for May's rent.

Post Hearing Evidence and Submissions

- [8] The Landlord's legal counsel emailed the Rental Office on May 21, 2024, and stated that as of that date, no further rent had been paid by the Tenant. The Tenant was provided the opportunity to reply to this submission by 12:00 pm on May 23, 2024, however no reply was received.

Analysis

Does the Tenant have to vacate the Rental Unit due to the Notice?

- [9] The Application seeks an order directing the Tenant to vacate the Rental Unit and ordering the Sheriff to put the Landlord into possession of the Rental Unit. 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:

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.*

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.*

The Notice – Causes for Eviction

- [10] The parties had conflicting evidence as to whether the Tenant paid the security deposit. The Tenant's evidence is that he paid it in cash and the Representative stated it had not been paid. The Landlord has the burden to prove the claims made in the Application. The Officer finds the Landlord has not established, on a balance of probabilities, that the Tenant has breached clause 61.(1)(a) of the Act by failing to pay the security deposit.
- [11] The Officer finds that the evidence does establish that the Tenant failed to pay rent for April 2024 and May 2024, in the amount of $\$700.00 \times 2 = \$1,400.00$. Both parties agreed that rent had not been paid for April or May, and as of the date of this Order, there has been no evidence that rent for April or May has been paid. Clause 19.(1) states that a tenant may not withhold rent and a tenant is to pay rent when it is due. The Officer finds that the Landlord properly served the Notice and has valid grounds to terminate the tenancy agreement pursuant to clause 60.(1) of the Act.

Deeming Provisions

[12] Clauses 60.(4) and (5) of the Act state:

60. 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.*

60. 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.*

[13] The evidence establishes that the Landlord served the Notice on April 5, 2024. The Tenant then 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 Officer finds the evidence establishes that the Tenant did neither. Therefore, the Officer finds the Landlord has valid grounds to terminate the tenancy agreement, the Tenant is deemed to have accepted the Notice, and the Tenant was required to vacate the Rental Unit by the effective date on the Notice.

Conclusion

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

[15] The tenancy agreement between the parties shall terminate effective 5:00 pm on May 31, 2024. The Tenant shall vacate the Rental Unit on or before this time and date.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 pm on May 31, 2024. The Tenant shall vacate the Rental Unit on or before this time and date
- 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 23rd day of May, 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.