

INTRODUCTION

- [1] On May 8, 2024 the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) pursuant to the *Residential Tenancy Act* (the “Act”). The Application seeks vacant possession of the Unit and an order for the Sheriff to put the Landlord in possession, which is the subject of this decision.
- [2] The Application also included a claim for rent and fees owing, which is the subject of Order LD24-178.
- [3] Attached to the Application was an *Eviction Notice (Form 4(A))* served by the Landlord to the Tenants on March 8, 2024, effective March 28, 2024 (the “Notice”), for the following reason:

You have not paid your rent in the amount of \$2,275.01.

*Particulars of termination:
Rent payment not received yet.*

- [4] On May 15, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on May 30, 2024 (the “Notice of Hearing”), along with a copy of the Application.
- [5] On May 23, 2024 the Rental Office emailed the parties an evidence package (the “Evidence Package”).
- [6] At 11:00 a.m. on May 30, 2024 the Residential Tenancy Officer (the “Officer”), a representative of the Landlord (the “Representative”), and the three Tenants participated in a teleconference hearing.

ISSUE

- i. Do the Tenants and all occupants have to vacate the Unit pursuant to the Notice?

SUMMARY OF THE EVIDENCE

- [7] The Unit is a three-bedroom, one-bathroom apartment located in a 12-unit building that the Landlord has operated since 2019 or 2020.
- [8] The Landlord and the Tenants entered into a first written, fixed term tenancy agreement for the period of September 1, 2022 to August 31, 2023. The parties entered into a second written, fixed term tenancy agreement for the period of September 1, 2023 to August 31, 2024. Rent in the amount \$2,175.00 is due on the first day of the month and a security deposit of \$2,175.00 was paid. Internet is not an included service in the tenancy agreement and there is an additional \$100.00 internet fee agreed to by the parties (see clause 20(2)(e) of the Act).
- [9] The Representatives’ evidence is summarized as follows. The Representative submitted into evidence a financial statement generated on May 17, 2024 (the “Statement”) showing the payments and expenses of the Tenants, with a balance owing of \$3,033.36. The Representative stated that no further payments have been made by the Tenants since the Statement was generated.
- [10] The Representative stated that the Tenants’ payment dates in the Statement may vary by a small amount of time from the actual payment date. After the Notice was served on March 8, 2024, the Landlord received only the following four payments:

- (1) \$1,516.66 on March 29, 2024 (Statement date – April 2, 2024);
- (2) \$758.33 on April 3, 2024 (same as Statement);
- (3) \$758.33 on April 30, 2024 (Statement date – May 1, 2024); and

(4) \$758.33 on May 3, 2024 (Statement date – May 1, 2024).

- [11] The Tenants' evidence is summarized as follows. The Tenants do not dispute the payment details provided in the Representative's evidence or the current total balance outstanding of \$3,033.36.

ANALYSIS AND CONCLUSION

- [12] The Landlord's basis for terminating the tenancy is pursuant to subsection 60(1) of the *Residential Tenancy Act*, which states:

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.

- [13] The evidence establishes that rent of \$2,175.00 was outstanding as of March 8, 2024, the date the Notice was served.

- [14] The Tenants did not pay the rental arrears within ten days of being served with the Notice. Therefore, the Notice was not invalidated pursuant to clause 60(4)(a) of the *Act*, which states:

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;

- [15] The Tenants have remained in arrears since the date the Notice was served. The Officer is not satisfied that the tenancy agreement was ever reinstated.

- [16] For the reasons above, the Officer finds that the Notice is valid and the Application is allowed. The Tenants and all occupants must vacate the Unit by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the parties shall terminate effective **5:00 p.m. on June 7, 2024**. The Tenants and all occupants must vacate the Unit by this time and date.
2. 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 31st day of May, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
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.