

INTRODUCTION

- [1] On May 9, 2024 the Landlord filed an amended *Landlord Application to Determine Dispute (Form 2(B))* (the "Application") with the Residential Tenancy Office (the "Rental Office"). 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. The Application also included a claim for rent owing, which is the subject of Order LD24-183.
- [2] On May 9, 2024 a representative of the Landlord (the "Representative") taped a copy of the Application to the Unit's door.
- [3] The Application was supported by an *Eviction Notice (Form 4(A))* served by the Landlord to the Tenant on March 28, 2024, effective April 30, 2024 (the "Notice"), for the following reasons:
- You have not paid your rent in the amount of \$2525.00;*
You are repeatedly late in paying rent; and
You have permitted an unreasonable number of occupants in the rental unit.
- Particulars of termination:*
Someone not on lease living there.
- [4] On May 15, 2024 the Rental Office mailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on May 28, 2024, along with a copy of the Application. The Rental Office emailed the Representative a copy of these documents and requested that the Representative tape these documents to the door of the Unit.
- [5] On May 21, 2024 the Representative provided the Rental Office with photographs of the documents taped to the door of the Unit.
- [6] On May 23, 2024 the Rental Office emailed the Representative an evidence package and requested the Representative serve the Tenant with these documents.
- [7] On May 28, 2024 the scheduled hearing was delayed from 11:00 a.m. to 12:00 noon. The Residential Tenancy Officer (the "Officer") was on the teleconference telephone line at the original scheduled time of 11:00 a.m. and neither party joined the conference. At 12:00 noon only the Representative joined the teleconference hearing. The Representative stated that the evidence package had not been served to the Tenant. The Officer adjourned the hearing to 9:00 a.m. on May 31, 2024.
- [8] On May 28, 2024, after the scheduled hearing, the Rental Office emailed the Representative an updated evidence package (the "Evidence Package"), which included notice of a rescheduled hearing for 9:00 a.m. on May 31, 2024 (the "Notice of Hearing"). The Representative taped the Notice of Hearing to the door of the Unit along with a copy of the Evidence Package, except for Page 1 of 20. The Representative submitted photographs to the Rental Office of the documents taped to the Unit's door.
- [9] On May 31, 2024 at 9:00 a.m. the Representative joined the teleconference hearing with the Officer. The Tenant did not join the teleconference. The Officer telephoned two numbers for the Tenant but received no response. The Officer was satisfied that the Tenant had been provided notice of the rescheduled hearing. At 9:14 a.m. the hearing proceeded in the absence of the Tenant. The hearing concluded at 9:59 a.m. The Landlord was permitted to submit additional documents after the hearing.

ISSUE

- i. Does the Tenant and all occupants have to vacate the Unit pursuant to the Notice?

SUMMARY OF THE EVIDENCE

- [10] The Representative's evidence is summarized as follows.
- [11] The Unit has three bedrooms and one bathroom. The Unit is located in a duplex building (the "Residential Property") that the Landlord has operated for thirty to forty years. The doors of the two units are on opposite ends of the Residential Property.
- [12] The Landlord and the Tenant entered into a written tenancy agreement that commenced on June 1, 2019. Rent in the amount of \$400.00 is due on the twentieth day of the month and a security deposit was not required.
- [13] As of March 28, 2024, the date the Notice was served, the Tenant had a \$2,525.00 balance of rent owing. The Representative submitted into evidence photographs of the taped Notice. The Tenant has not paid rent for April, May or June of 2024, an additional \$1,200.00. The last rent payment received by the Landlord from the Tenant was \$400.00 on March 1, 2024.
- [14] The Notice had a typographical error regarding the Unit's address when the Representative taped it to the Unit's door on March 28, 2024. The Representative fixed and initialed the typographical error and taped a copy of a corrected Notice (the "Corrected Notice") to the Unit's door during the first week of April, approximately April 3 to 5, 2024. The Representative has been unable to locate a copy of the Corrected Notice.
- [15] The Representative provided evidence regarding the occupants of the Unit.

ANALYSIS & CONCLUSION

- [16] Based upon the evidence presented, the Officer finds that the Representative corrected the typographical error in the Notice and served the Tenant with the Corrected Notice by April 7, 2024.
- [17] If the Representative had not served the Corrected Notice, the Officer would have amended the Notice pursuant to clause 85(1)(l) of the *Residential Tenancy Act*. The Notice contained the Tenant's name as it appears in the tenancy agreement. The Notice was taped to the Unit's door, which is not nearby the door for the other unit in the Residential Property. Based upon the evidence presented, it is clear that the Notice was in fact directed to the Tenant.
- [18] The Landlord's first 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.

- [19] The evidence establishes that rent of \$2,525.00 was outstanding as of April 7, 2024.
- [20] The Tenant did not pay the rental arrears within ten days of being served with the Corrected Notice. Therefore, the Corrected 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;

- [21] The Officer finds that the Corrected Notice is valid and the Application is allowed. The Tenant and all occupants must vacate the Unit by the timeline below.

[22] It is unnecessary for the Officer to consider the Landlord's other reasons for terminating the tenancy agreement.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the parties shall terminate effective **5:00 p.m. on June 30, 2024**. The Tenant 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 5th day of June, 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.