

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 23, 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 Rental 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 LD24-186.
- [3] On May 23, 2024 a representative of the Landlord (the “Representative”) e-mailed and taped a copy of the amended Application to the Rental Unit’s door.
- [4] The Application was supported by an *Eviction Notice (Form 4(A))* (the “Notice”).
- [5] The Notice dated May 1, 2024 effective May 22, 2024 was served by the Representative to the Tenant on May 2, 2024 by hand-delivery for the following reasons:
- You have not paid your rent in the amount of \$2,400.00; and
You are repeatedly late in paying rent.*
- The particulars of termination state:
“For the second month in three months you have been a tenant you have not paid rent on time. You were 18 days late in March and only paid out of threat of eviction. Now again.”*
- [6] On May 28, 2024 the Rental Office mailed the parties notice of a teleconference hearing (the “Notice of Hearing”), along with a copy of the amended Application. On May 29, 2024 the Representative taped the Notice of Hearing to the Rental Unit’s door.
- [7] On June 3, 2024 the Rental Office e-mailed the EP to the parties. On June 4, 2024 the Representative taped the EP to the Rental Unit’s door. The EP contains 47-pages of documents submitted by the Landlord.
- [8] On June 6, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Representative and the Tenant participated.

Preliminary Matter I – Amendment to the Application to include June 2024 rent

- [9] At the hearing, the Representative requested to amend the amended Application to include the rental arrears for June 2024. The Tenant did not object to the requested amendment. The Officer accepted the request and amended the Application. The rent owing portion of the amended Application is subject to Order LD24-186.

Preliminary Matter II – Amendment to the Application to remove a party

- [10] The tenancy agreement includes two tenants. The Application names these two tenants as respondents.
- [11] The Representative served all the documents as stated above with the belief that both tenants were living in the Rental Unit. However, at the hearing, the Tenant stated that the other tenant vacated the Rental Unit sometime in March 2024.
- [12] After the hearing, the Officer requested confirmation that the other tenant was served all the documents stated above. The Representative could not confirm this because he did not have contact information for the other tenant.

- [13] On June 11, 2024 the Tenant confirmed in writing that she believed the other tenant abandoned the tenancy agreement. The Tenant acknowledged that she is the sole tenant on the tenancy agreement and is solely responsible for the findings of Orders LD24-185 and LD24-186.
- [14] On June 12, 2024 the Representative confirmed in writing, that he did not object to releasing the other tenant from the tenancy agreement.
- [15] The Officer permitted the amendment to the Application to remove the other tenant (the other respondent) from the Application.

Issue

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

Summary of the Evidence

- [16] On February 9, 2024 the parties entered into a written, fixed-term tenancy agreement for the period of March 1, 2024 to February 28, 2025. Rent is \$2,400.00 due on the first day of the month. A security deposit of \$2,400.00 was paid on February 9, 2024.

Landlord's Evidence and Submissions

- [17] The Landlord submitted 33-pages of documents into evidence including: a copy of the amended Application, photographs of proof of service, the Notice, another *Eviction Notice* (without a date), a copy of the tenancy agreement, a summary of the Tenant's rent payment history, e-transfer receipts, and text messages.
- [18] The Representative stated that the Tenant moved into the Rental Unit on March 1, 2024 and did not pay rent. He served an *Eviction Notice* on March 8, 2024 for non-payment of rent. The Representative stated that on March 18, 2024 the Tenant paid the full amount of March's rent.
- [19] The Representative stated that on March 28, 2024 the Tenant paid April 2024 rent in full.
- [20] The Representative stated that the Tenant did not pay May 2024 rent on May 1, 2024. On May 2, 2024 he served the Notice to the Tenant for non-payment of rent and repeatedly late paying rent.
- [21] The Representative stated that on May 2, 2024 the Tenant paid \$500.00 and on May 6, 2024 the Tenant paid another \$500.00. The Tenant made no further rent payments.
- [22] The Representative stated that currently the Tenant owes \$3,800.00 in rental arrears. This includes \$1,400.00 for rental arrears in May 2024 and \$2,400.00 in rental arrears for June 2024.

Tenant's Evidence and Submissions

- [23] The Tenant did not dispute owing the rental arrears submitted by the Representative. The Tenant stated that her co-tenant moved out of the Rental Unit three weeks into March 2024. The Tenant stated that due to this, along with troubles with employment, she fell on financial hardship.
- [24] The Tenant stated that she is now employed full-time and is about to be approved for a rent subsidy. The Tenant stated that she will pay the rental arrears soon.
- [25] The Tenant provided additional submissions regarding other issues at the Rental Unit which are not subject to the amended Application.

Analysis & Conclusion

[26] The Application is made in accordance with clause 75 of the Act. The reasons for the termination of the tenancy are pursuant to clauses 60(1) and 61(1)(b) of the Act, which state:

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:*
(b) *the tenant is repeatedly late in paying rent.*

[27] The Landlord bears the onus of proving its claim on a balance of probabilities. This means that a decision-maker must be satisfied that there is sufficiently clear, convincing and cogent evidence to support the claims.

[28] The evidence establishes that the rent of \$2,400.00 was outstanding as of May 2, 2024, the date the Notice was served.

[29] The Tenant made two \$500.00 payments on May 2 and 6, 2024. However, the Tenant did not pay the remaining \$1,400.00 within ten days of being served the Notice. Therefore, the Notice was not invalidated pursuant to clause 60(4)(a) of the Act, which states:

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.*

[30] The Tenant has remained in arrears since the date the Notice was served. Despite the Tenant's partial payments, there is no evidence which satisfies the Officer that the Representative withdrew the Notice or reinstated the tenancy agreement.

[31] Clause 60(5) of the Act states:

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.*

[32] The Tenant did not pay the overdue rent and did not file an application with the Rental Office within ten days of receiving the Notice. By operation of law, the Tenant is deemed to have accepted the end of the tenancy pursuant to the Notice.

[33] Therefore, the Officer finds that the Notice is valid and the Application is allowed. The Tenant and all occupants must vacate the Rental Unit by the timeline below.

[34] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- A. The tenancy between the parties shall terminate effective **5:00 p.m. on June 26, 2024**. The Tenant and all occupants must vacate the Rental Unit by 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 12th day of June, 2024.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals 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.