

INTRODUCTION

- [1] On May 21, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office") disputing an *Eviction Notice* (Form 4(A)) dated and served on May 11, 2024 (the "Notice").
- [2] The Notice was served to the Tenant for repeatedly late rent payments. The particulars of termination state:
- "[Tenant] has not paid rent on time dating back to over a year and a half ago."*
- [3] The Application states in part:
- "I have a text from you saying that I have 10 days to pay my rent and that if it happens one more time, then you will evict. I paid my rent, then afterwards you say you arent honoring what you said and are evicting me..."*
- [4] On May 24, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 9:00 a.m. on June 11, 2024, along with a copy of the Application.
- [5] On June 5, 2024 the Rental Office emailed a 20-page evidence package to the parties (the "Evidence Package" or "EP").
- [6] On June 11, 2024 a teleconference hearing was held with the parties before the Residential Tenancy Officer (the "Officer") for determination of the Application. The Tenant and a representative of the Landlord (the "Representative") participated in the hearing. At the hearing the parties confirmed receipt of the Evidence Package. During the hearing the Representative emailed additional documentary evidence to the Officer and the Tenant regarding late rent payments. These documents also form part of the record for this decision.

PRELIMINARY MATTERS

- [7] The Evidence Package included an eviction notice for non-payment of May 2024 rent. The Parties confirmed that this notice had been invalidated by payment of the rent due within ten days of service.
- [8] The Notice was served on May 11, 2024 for repeatedly late rent payments. The Notice's effective date of May 31, 2024 is incorrect because it was necessary for the Landlord to provide one clear month's notice (see subsection 61(3) of the *Residential Tenancy Act* (the "Act"). The effective date is automatically corrected to the earliest permitted effective date of June 30, 2024 pursuant to section 54.
- [9] At the hearing the Officer noted that the Tenant had selected two items on the Application. The Tenant confirmed that the sole matter to be determined at the hearing was with regard to the validity of the Notice.

ISSUE

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

SUMMARY OF THE EVIDENCE

- [10] The Unit is a two-bedroom, one-bathroom unit located in a seven-unit building that the Landlord has owned since 2012 (the "Residential Property").

- [11] The Landlord and the Tenant entered into a one-year fixed term tenancy agreement that commenced on November 1, 2014. No security deposit payment was required. At the end of the fixed term the agreement continued on a month-to-month basis. Rent in the amount of \$799.00 was due on the first day of the month. The rent was increased to \$822.97 as of June 1, 2024.

Landlord's Evidence and Submissions

- [12] The Landlord's evidence is summarized as follows.
- [13] The Tenant has a long history of late rent payments. The Representative submitted into evidence email records from August 30, 2022 to May 10, 2024 showing late rent payments (EP18 to 20).
- [14] On January 22, 2024 the Representative emailed the Tenant an eviction notice (Form 4(A)) for non-payment of rent. The Tenant had not paid part of November 2023 rent and all of December 2023 and January 2024 rent.
- [15] On March 2, 2024 the Representative emailed the Tenant an eviction notice (Form 4(A)) for non-payment of March 2024 rent. In the body of email, the Representative stated:

"I have attached a copy of an eviction notice for failure to pay rent. I am no longer letting people pay rent late as my bills when I pay late I am charged interest."

- [16] On May 3, 2024 the Representative emailed the Tenant an eviction notice (Form 4(A)) dated May 2, 2024 for non-payment of May 2024 rent.
- [17] The Representative stated that between May 2, 2024 and May 10, 2024 he spoke with other persons regarding the requirement for a tenant to pay rent on time. The Representative then decided to serve the Notice.

Tenant's Evidence and Submissions

- [18] The Tenant's evidence is summarized as follows.
- [19] The Tenant did not dispute the amount of rent that was due, the payment dates or the details of the eviction notices served. The Tenant provided evidence regarding her circumstances.
- [20] The Tenant submitted into evidence text message correspondence with the Representative regarding the payment of May 2024 rent (EP13 and 14). On May 2, 2024 the Tenant messaged the Representative stating that her rent would be paid on May 9, 2024. The Representative responded advising that an eviction notice would be served for late payment of rent if the next month's rent was not paid on time.
- [21] The Tenant paid May 2024 rent on May 10, 2024.
- [22] The Tenant stated that she was unable to pay June 2024 rent by the first day of the month because she was hospitalized. The Tenant paid the full amount of rent due on June 3, 2024.

ANALYSIS

- [23] The Landlord seeks to end the tenancy pursuant to clause 61(1)(b) of the Act, which states:

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.

- [24] The evidence of the parties establishes that the Tenant has repeatedly paid rent late, after the first day of the month.
- [25] The Landlord has served three recent eviction notices for non-payment of rent on the following dates: (1) January 22, 2024; (2) March 2, 2024; and (3) May 3, 2024.
- [26] In the March 2, 2024 email from the Representative to the Tenant it was clearly communicated that the late payment of rent by the Tenant was unacceptable to the Landlord. This does not appear to be a case where the legal doctrine of equitable estoppel¹ applies because the Landlord has been clear that the Tenant must pay rent by the first day of the month.
- [27] The Officer has reviewed the text message correspondence submitted by the Tenant and the email messages that accompanied the three eviction notices for non-payment of rent (listed above). The Officer finds that the Landlord did not agree to refrain from serving an eviction notice for repeatedly late rent pay in May of 2024.
- [28] In the May 2024 text message correspondence, the Representative was clear that an eviction notice would be served if June 2024 rent was not paid on time. The Representative was silent regarding whether an eviction notice would be served in May 2024 for repeatedly late rent payments. Based upon the evidence presented, the Officer is unable to find an agreement or prohibition preventing the Representative from serving the Notice.
- [29] Further, even if such an agreement was found to exist, the validity of the agreement would be in question because the Tenant did not pay rent to the Landlord by May 9, 2024, as stated by the Tenant in the May 2, 2024 text message (EP13).
- [30] The Officer notes that, unlike an eviction notice for non-payment of rent, an eviction notice for repeatedly late rent payments cannot be invalidated by paying the rent due within ten days.
- [31] For the reasons above, the Officer finds that the Notice is valid and the Application is denied.
- [32] The Officer acknowledges this decision will pose difficulties for the Tenant. The Officer makes this decision as required by the provisions of the *Act*.

CONCLUSION

- [33] The Notice is valid and the Application is denied. The Tenant 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 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 12th day of June, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore

¹ A Rental Office case where equitable estoppel was considered is Order LD23-597, available at the following website: <https://peirentaloffice.ca/wp-content/uploads/LD23-597.pdf>

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.