

**INTRODUCTION**

- [1] On June 3, 2024 the Landlords 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 Landlords in possession and a claim for rent owing.
- [2] Attached to the Application was a first *Eviction Notice (Form 4(B))* dated January 26, 2024 emailed by the Landlords to the Tenant on January 23, 2024, effective June 1, 2024 (the "First Notice"). This notice was served for the following reason:
- I want possession of the rental unit for myself.*
- [3] On January 25, 2024 the Landlords also sent the Tenant a copy of the First Notice by registered mail, which was delivered on January 29, 2024.
- [4] On May 28, 2024 the Landlords emailed the Tenant a second *Eviction Notice (Form 4(A))* dated May 27, 2024, effective May 31, 2024 (the "Second Notice"). This notice was served for the following reason:
- You have not paid your rent in the amount of \$1346.*
- Particulars of termination:*  
*Partial rent for April and full rent for May is in arrears.*
- [5] On June 3, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on June 13, 2024, along with a copy of the Application.
- [6] On June 12, 2024 the Rental Office emailed the parties an evidence package, which included the First Notice and the Second Notice (the "Evidence Package").
- [7] On June 13, 2024 the teleconference hearing time was moved from 11:00 a.m. to 1:00 p.m. due to the Residential Tenancy Officer (the "Officer") being unable to attend the scheduled time. The Rental Office contacted the parties regarding the revised hearing time. The Rental Office monitored the teleconference hearing line from 10:53 a.m. to 11:17 a.m. to ensure that neither party inadvertently called into the original hearing time.
- [8] On June 13, 2024 at 1:00 p.m. the Officer and the Landlords joined the teleconference hearing. The Officer telephoned the Tenant but was unable to connect. The Officer waited until 1:10 p.m. before proceeding with the hearing in the absence of the Tenant. Shortly after the hearing commenced, the Tenant emailed the Rental Office regarding an emergency situation. The Officer adjourned the hearing to 3:45 p.m.
- [9] On June 13, 2024 at 3:45 p.m. the Officer and the Landlords joined the teleconference hearing. The Officer was able to connect the Tenant to the teleconference hearing with an additional telephone line.
- [10] The Officer notes that two separate decisions have been issued due to two distinct appeal periods. This decision determines the validity of the Second Notice, served for non-payment of rent. The other decision, Order LD24-195, determines the validity of the First Notice (Landlords' occupation), the Landlords' monetary claim for rent owing, and the section 72 compensation to the Tenant.

**PRELIMINARY MATTER**

[11] In the Application the Landlords claimed for part of April 2024 rent, May 2024 rent and June 2024 rent. The evidence of both parties established that the Second Notice (non-payment of rent) was served to the Tenant by email on May 28, 2024. The Tenant had not filed an application with the Rental Office disputing the Notice within ten days of being served with the Notice. Based upon this evidence and because the rent owing monetary claim in the Application is a highly related matter to the validity of the Second Notice, the Officer ruled that the validity of the Second Notice would also be determined and the Application is amended accordingly.

**ISSUE**

- i. Do the Tenant and all occupants have to vacate the Unit pursuant to the Second Notice, served for non-payment of rent?

**SUMMARY OF THE EVIDENCE**

- [12] The Unit is a three-bedroom, one-and-a-half-bathroom single family dwelling that the Landlords have owned since 1997.
- [13] The Landlords and the Tenant entered into a written, one-year, fixed term tenancy agreement that commenced around 2015. The Tenant paid an \$850.00 security deposit. At the end of the fixed term the tenancy continued on a month-to-month basis. Rent in the amount of \$980.00 is due on the first day of the month.

**Landlords' Evidence and Submissions**

- [14] The Landlords' evidence is summarized as follows.
- [15] The Landlords testified that the Tenant paid her rent by e-transfer. The Tenant made the following e-transfer payments for 2024 rent:
- December 29, 2023 - \$960.00
  - February 1, 2024 - \$980.00
  - February 1, 2024 - \$20.00
  - March 1, 2024 - \$980.00
  - April 14, 2024 - \$114.00
  - April 15, 2024 - \$500.00
- [16] The Landlords stated that the \$500.00 rent payment received on April 15, 2024 was the last rent payment by the Tenant. Currently the Tenant owes rent for part of April 2024 (\$366.00), May 2024 (\$980.00) and June 2024 (\$980.00), in the total amount of \$2,326.00.
- [17] With regard to the Tenant's evidence, below, regarding a \$1,300.00 cash payment via the Tenant's son, the Landlords stated that they never received these funds. The Landlords submit that it is possible the Tenant provided \$1,300.00 in cash to her son, but these funds were never offered to the Landlords.
- [18] The Landlords stated that they asked the Tenant about unpaid rent by text message but were not offered the outstanding rent.
- [19] The Landlords had always planned on moving back to Prince Edward Island and that is why the Landlords never sold the Unit. The Landlords' daughter decided that she wanted to attend the University of Prince Edward Island and the Landlords decided in January of this year to move back.

- [20] The Landlords do not own any other houses or principal residences on the Island. The Landlords' daughter had a job lined up for June 26, 2024 which is in jeopardy because the Tenant has not moved out of the Unit. The Landlords stated that their lives have been put in turmoil because the Tenant has not moved out of the Unit as required by law.
- [21] The Landlords have not paid the Tenant one month's compensation and moving expenses because the Tenant did not move out and the Tenant owes the Landlords money.

### Tenant's Evidence and Submissions

- [22] The Tenant's evidence is summarized as follows.
- [23] The Tenant testified that she agreed with the Landlords evidence regarding the details of the 2024 e-transfer rent payments. The Tenant has not sent further e-transfers to the Landlords since the \$500.00 payment on April 15, 2024.
- [24] The Tenant testified that on May 18, 2024 the Landlords came to the Island. The Tenant stated that she gave her fifteen-year-old son, R.G., an envelope with \$1,300.00 in cash. R.G. was to provide the Landlords access to the Unit and the envelope containing the \$1,300.00 in cash. The Tenant thought only \$46.00 remained unpaid for May rent. The Tenant stated that she was in the hospital at the time the cash payment was made.
- [25] The Tenant stated that she thought the Second Notice would cancel the First Notice.
- [26] The Tenant has been looking for a new place to move but has been unsuccessful finding a new place.
- [27] The Tenant has not filed any application with the Rental Office.

### ANALYSIS AND CONCLUSION

- [28] The Landlords' basis for terminating the tenancy in the Second Notice is pursuant to subsection 60(1) of the 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.*
- [29] The evidence of the parties establishes that part of April 2024 rent was paid by e-transfer, in the amount of \$614.00. The evidence also establishes that the Landlords received no further e-transfer payments for April, May or June of 2024 rent.
- [30] The Tenant claims that on May 18, 2024 the amount of \$1,300.00 was paid by the Tenant to the Landlords by the Tenant's fifteen-year-old son, R.G.
- [31] On the evidence presented, the Officer is not satisfied that the Tenant's son in fact offered to pay the Landlords \$1,300.00 in rent. The Landlords provided their direct testimony that the Tenant's son never attempted to pay rent as claimed by the Tenant. The Tenant was not present when the alleged payment occurred. The Tenant's claim that rent was paid in cash was a deviation from the normal practice of making payments by e-transfer. The Officer notes that e-transfer payments automatically generate objective evidence confirming the payment whereas cash payments do not. The Officer finds that there is insufficient evidence to establish that the Tenant's son paid or offered to pay the Landlords \$1,300.00 in cash.

[32] As a result, the Officer finds that the Tenant did not pay the \$1,346.00 in rental arrears within ten days of being served with the Second Notice. Therefore, the Second 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.*

[33] The Officer finds that the Tenant still owes \$1,346.00 for part of April 2024 rent and all of May 2024 rent. The Officer also finds that the Tenant did not pay June 2024 rent.

[34] The Officer finds that the Second Notice served for non-payment of rent is valid and the Application is allowed. The Tenant and all occupants must vacate the Unit by the timeline below.

[35] In Order LD24-195 the Officer found that the First Notice served for Landlords' occupation of the Unit is valid and would have terminated the tenancy. However, the Second Notice for non-payment of rent is also valid and the Tenant and all occupants must vacate the Unit by this earlier time and date.

**IT IS THEREFORE ORDERED THAT**

1. The tenancy between the parties shall terminate effective **5:00 p.m. on June 24, 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 17th 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.