

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 First Notice (Landlords' occupation), the Landlords' monetary claim for rent owing, and the section 72 compensation to the Tenant. The other decision, Order LD24-194, determines the validity of the Second Notice, served for non-payment of rent.

ISSUES

- i. Does the Tenant owe rent to the Landlords?
- ii. Do the Tenant and all occupants have to vacate the Unit pursuant to the First Notice, served for the Landlords' occupation of the Unit?
- iii. Must the Tenant be compensated by the Landlords pursuant to section 72 of the *Residential Tenancy Act* (the "Act")?

SUMMARY OF THE EVIDENCE

- [11] The Unit is a three-bedroom, one-and-a-half-bathroom single family dwelling that the Landlords have owned since 1997.
- [12] 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

- [13] The Landlords' evidence is summarized as follows.
- [14] 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
- [15] 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.
- [16] 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.
- [17] The Landlords stated that they asked the Tenant about unpaid rent by text message but were not offered the outstanding rent.
- [18] The Landlords stated that they 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.
- [19] 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.

[20] 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

[21] The Tenant's evidence is summarized as follows.

[22] 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.

[23] 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.

[24] The Tenant stated that she thought the Second Notice would cancel the First Notice.

[25] The Tenant has been looking for a new place to move but has been unsuccessful finding a new place.

[26] The Tenant has not filed any application with the Rental Office.

ANALYSIS

Rent Owing

[27] In paragraph [33] of Order LD24-194 the following determination was made:

"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."

[28] The Tenant was also ordered to vacate the Unit by June 24, 2024. The Officer finds that the Tenant is responsible for June 2024 rent up to the vacate date in Order LD24-194, in the amount of \$784.00 (24 days divided by 30 days and multiplied by \$980.00).

[29] The total amount of rent owed by the Tenant to the Landlords is \$2,130.00.

The First Notice – Landlords' Occupation

[30] In the First Notice, the Landlords seek to end the tenancy with the Tenant pursuant to subsections 62(1) and (2) of the *Act*, which state:

(1) A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by

(a) the landlord;

(b) the landlord's spouse;

(c) a child, parent or a dependent of the landlord or the landlord's spouse; or

(d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child, parent or dependent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the residential property or mobile home park in which the rental unit is located.

(2) *The date for termination specified in the notice of termination shall be at least four months after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.*

- [31] The Officer notes that, in the context of section 62 of the *Act*, the term “good faith” has a very specific meaning. Namely, whether the Landlords have a genuine intention to in fact reside in the Rental Unit.
- [32] Section 62 of the *Act* is similar to section 48 of Ontario’s *Residential Tenancies Act*, S.O. 2006, C. 17.
- [33] In the Ontario Supreme Court decision, *Fava v. Harrison*, 2014 ONSC 3352, the Court considered what is meant by “good faith” in the context of a termination notice for landlord’s occupation. The following is stated at paragraph [17] of this decision:

“We accept, as reflected in Salter, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

- [34] The Officer notes that this interpretation of “good faith” is the same as the interpretation of section 15 of the *Rental of Residential Property Act* (the “*RRPA*”), which also addressed occupation of a rental unit by a landlord (see Island Regulatory and Appeals Commission Orders LR19-09, LR19-16 and LR21-50).
- [35] On April 8, 2023, when the residential tenancy legislation changed from the *RRPA* to the *Residential Tenancy Act*, the law regarding landlord’s occupation of a rental unit continued to be similar to Ontario’s legislation. As a result, it appears to the Officer that “good faith” still means whether the landlord has a genuine intention to reside in a rental unit.
- [36] The Landlords provided a logical explanation why they will be moving into the Unit. The Tenant did not contest the Landlords’ reasons for moving into the Unit. Based upon the evidence presented, the Officer is satisfied that the Landlords served the First Notice in good faith and will actually occupy the Unit as required by section 62.

Tenant Compensation

- [37] The Officer notes that sections 72 and 73 of the *Act* require a landlord to pay compensation to a tenant who receives a termination notice for landlord’s occupation of a rental unit. These sections state as follows:

A landlord shall compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to one month’s rent plus reasonable moving expenses in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant.

Where the landlord is required to compensate a tenant under section 70, 71 or 72, the landlord shall compensate the tenant no later than the termination date specified in the notice of termination of the tenancy given by the landlord.

- [38] Subsection 6(1) of the *Residential Tenancy Regulations* (the “*Regulations*”) states:

For the purposes of subsections 70(1) and (2) and sections 71 and 72 of the Act, reasonable moving expenses are the lesser of the actual expenses of the move or one month's rent.

[39] It appears to the Officer that, despite the Tenant being evicted for non-payment of rent in Order LD24-194 and required to move out by an earlier date, the Tenant is still entitled to section 72 compensation.

[40] In the case *Marineland of Canada Inc. v. Olsen*, 2011 ONSC 6522, the Ontario Supreme Court determined a residential landlord and tenant appeal from the Landlord and Tenant Board ("LTB"). A landlord had served a termination notice for conversion to a non-residential use. However, the landlord later served an eviction notice for non-payment of rent and obtained a LTB eviction order due to non-payment of rent. At paragraphs [10] and [11] of the decision the Court stated as follows:

"The landlord also argued that the Board erred in ordering payment of compensation to the tenants, since their tenancy was terminated for non-payment of rent and not because of the landlord's planned conversion.

It was reasonable for the Board to conclude that the Act creates an immediate legal obligation on the landlord to compensate a tenant once the landlord has given notice to terminate for purposes of conversion (see, for example, Darragh, above at para. 24). It is clear that the purpose of the required payment is to compensate the tenant for the bother and expense of locating and moving into alternate premises. Therefore, the subsequent termination of the Olsens' tenancy for non-payment of rent did not release the landlord from its obligation to compensate them."

[41] Similarly, the service of the First Notice for the Landlords' occupation of the Unit created an immediate legal obligation for the Landlords to pay the Tenant compensation as of the effective date in the First Notice. The Officer finds that the Landlords must still compensate the Tenant pursuant to section 72.

[42] The Landlords were supposed to pay the Tenant compensation by the effective date in the First Notice. The Landlords refused to pay compensation because the Tenant had over one months' rental arrears and had not moved out of the Unit. In the circumstances of this case, the Officer finds it is appropriate to extend the First Notice's effective date, as permitted by clause 85(1)(n)), to allow compliance with section 73 of the Act. The Officer extends the effective date of only the First Notice to July 8, 2024, to coincide with the end of the appeal period of this Order.

[43] To provide compensation equal to one month's rent, as required by section 72, the Officer first offsets \$980.00 from the rent owed by the Tenant. This reduces the rent owing from \$2,130.00 to \$1,150.00. The compensation equal to one month's rent is therefore considered paid pursuant to this Order.

[44] The Officer notes that the moving expenses compensation is capped at \$980.00 pursuant to subsection 6(1) of the *Regulations*. At this time the Tenant's moving expenses are unknown. Therefore, the Officer finds that the Tenant must pay the Landlords \$1,150.00 minus the lesser of \$980.00 or the Tenant's actual moving expenses. As a result, the Officer finds that the moving expenses compensation is also paid in full pursuant to this Order.

CONCLUSION

[45] The Application is allowed.

[46] The Tenant owes \$2,130.00 in rent to the Landlords.

- [47] The Landlords must pay one month's rent of \$980.00 to the Tenant plus reasonable moving expenses (section 72 of the *Act*).
- [48] The Officer offsets these amounts, which results in the Tenant owing \$1,150.00 in rent to the Landlords minus the Tenant's reasonable moving expenses, up to a maximum amount of \$980.00. There will be a net amount of rent owing by the Tenant to the Landlords.
- [49] Pursuant to the monetary offsets in this Order, the section 72 compensation to the Tenant is paid in full.
- [50] The First Notice served for Landlords' occupation of the Unit is valid. The Officer notes that the First Notice would terminate the tenancy effective 5:00 p.m. on July 8, 2024.
- [51] However, in Order LD24-194 the tenancy was already terminated effective **5:00 p.m. on June 24, 2024** due to the Second Notice served for non-payment of rent. The Tenant is already required to move out of the Unit by this earlier time and date pursuant to Order LD24-194.

IT IS THEREFORE ORDERED THAT

1. The rent owing by the Tenant (\$2,130.00) is first offset by the section 72 one month's rent compensation (\$980.00) payable to the Tenant, leaving a balance of \$1,150.00 in rent owing by the Tenant to the Landlords.
2. The net amount of \$1,150.00 in rent owing is further reduced by a second offset for the Tenant's section 72 reasonable moving expenses compensation, by subtracting \$1,150.00 by the lesser of:
 - (a) \$980.00; or
 - (b) the Tenant's actual moving expenses.

The Tenant shall make this net rent payment to the Landlords [\$1,150.00 minus (a) or (b)] by July 8, 2024.

3. Pursuant to the monetary offsets in this Order, the section 72 compensation to the Tenant is paid in full.
4. The First Notice served for Landlords' occupation of the Unit is valid.
5. 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 **20 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.