

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 3, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) disputing an eviction notice.
- [3] On June 3, 2024 the Tenant hand delivered the Application to the Landlord.
- [4] The Application was supported by a *Form 4 (A) Eviction Notice* (the “Notice”).
- [5] The Notice dated June 3, 2024 effective June 23, 2024 was served by the Landlord to the Tenant by posting the Notice to the front door of the Rental Unit for the following reason:

1. *You have not paid your rent in the amount of \$383.33 + Power \$89.06 Totaling \$472.39.*

The particulars of termination state:

“Late Rent. Habitual trend of late power payment.”

- [6] On June 7, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [7] On June 18, 2024 the Rental Office emailed the parties a 14-page evidence package (the “EP”).
- [8] On June 20, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant, the Landlord and a witness for the Landlord (“LW”) participated.

Preliminary Matters – Post-hearing submissions

- [9] The Officer permitted the parties to provide additional submissions with a deadline of Monday, June 24, 2024 at 4:00 p.m.
- [10] The additional submissions were in relation to the Landlord signing a document for the Tenant and permitting the Tenant an opportunity to pay the outstanding rental arrears. The additional submissions are summarized below.

Issue

- i. Must the Tenant vacate the Rental Unit due to the Notice?

Summary of the Evidence

- [11] The Rental Unit is a single bedroom in a 4-bedroom, single-family dwelling with shared facilities (the “Residential Property”). The Residential Property has two other occupants, the Landlord and LW.
- [12] In the summer of 2021, the Tenant and the Landlord entered into an oral month-to-month sublet tenancy agreement. The Tenant’s share of the rent is \$383.33 due on the first day of the month. The Tenant is also responsible for 1/3 of the electricity bill. No security deposit was required.

Landlord’s Evidence and Submissions

- [13] The Landlord submitted 7-pages of documents into evidence including: written submissions and photographs.

- [14] On June 3, 2024 the Landlord served the Notice to the Tenant for non-payment of rent and an unpaid electricity bill. The Landlord stated that the Tenant owed \$383.33 for his portion of June rent, and \$89.06 for his portion of April's electricity bill.
- [15] On June 5, 2024 the Tenant paid the Landlord \$89.06 for the outstanding April electricity bill. The Landlord stated that as of the date of the hearing, the Tenant owes \$383.33 for June rent and now \$50.55 for May's electricity bill.
- [16] The Landlord stated that rent is due on the first day of the month. The electricity bill is generally due at the end of each month but varies on the amount due. The Landlord, LW and the Tenant split the rent and the electricity three-ways.
- [17] The Landlord stated that the Tenant is repeatedly late with paying the electricity bill and the rent. The Landlord stated that he started requesting the parties sign receipt of payment for both the rent and the electricity. The Landlord stated that it is the Tenant's responsibility to pay the rent and the electricity on time.
- [18] LW corroborated the Landlord's submissions. LW stated that he moved into the Residential Property in July 2023. LW stated that the Tenant is regularly late with paying his share of the rent and the electricity bill.

Tenant's Evidence and Submissions

- [19] The Tenant stated that he is on disability and receives financial assistance every month from social assistance. The Tenant stated that the Landlord is aware of this arrangement as he signed a document a year ago confirming the Tenant lived in the Residential Property.
- [20] The Tenant stated that his financial assistance is under review and he is required to get another signature from the Landlord. The Tenant stated that the Landlord will not sign the document and he is unable to pay the rental arrears.
- [21] The Tenant stated that if the Landlord signs the document for social assistance he will be able to pay the rental arrears right away. The Tenant stated that he has financial hardship.

Post-Hearing Submissions

- [22] During the teleconference hearing, the Tenant submitted that the Landlord was impeding the Tenant's ability to pay rent. The Tenant submitted that the Landlord was not willing to sign a document required for his social assistance.
- [23] In response to the Tenant's submissions, the Landlord admitted to knowing about the Tenant's social assistance, however, disputed that he was asked by the Tenant to sign a document. The Landlord stated that he reviewed the document but there was an inaccuracy in the monthly rent owed.
- [24] In light of these circumstances, the Officer requested that the Tenant update the social assistance document with the accurate details and provide it to the Landlord to sign. The Officer provided the parties a deadline of June 24, 2024 at 4:00 p.m. to confirm with the Officer that the document was signed, and to inform the Officer whether or not the Tenant paid the outstanding rental arrears by the deadline.
- [25] On June 20, 2024 at 1:50 p.m., the Landlord confirmed with the Rental Office that he signed the document for the Tenant at the request of the Officer. The Landlord attached a photograph of the signed document.

[26] The photograph showed a napkin sized, hand-written note which stated:

"To: Social Assistance Program P.E.I.

This letter is to confirm that [Tenant] has been residing at [Residential Property] where he rents a room from a [Landlord] for the amount of \$383.33 CA (for the month of June 2024), plus electricity \$50.55 (for May).

*Signed [Landlord]
June 20, 2024"*

[27] On June 24, 2024 at 2:13 p.m., the Tenant provided the following submission by email to the Rental Office:

"This is [Tenant] reporting in, to say that I've met with my case-worker at social assistance, who informed me that my rental assistance has effectively been cut-off for this month. This means I will have to pay rent to [Landlord] out of my food money which won't arrive until Friday (24th).

Cody Burke is our mutual rental officer. If you could please forward this message his way, I would be in your debt.

Thank you."

[28] On June 24, 2024 at 4:06 p.m., the Landlord provided the following submission by email to the Rental Office:

"It is 4:05 p.m. on Monday June 24, 2024. [Tenant] has not paid his rent."

[29] The Officer advised the parties during the teleconference hearing that these post-hearing submissions would form part of the evidentiary record.

Analysis

[30] The Tenant filed the Application in accordance to 60(4), pursuant to clause 75 of the Act, disputing the Notice. The Landlord's reason for terminating the tenancy is pursuant to clause 60(1) of the Act. The relevant law is as follows:

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.*

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.*

Unpaid utilities

- (6) *A landlord may treat unpaid utility charges as unpaid rent and may give a notice of termination under this section where*
- (a) *a tenancy agreement requires the tenant to pay utility charges to the landlord; and*
 - (b) *the utility charges are unpaid more than one month after the tenant is given a written demand for payment of them.*

- [31] The Landlord bears the onus of proving their claim on a balance of probabilities. This means that the decision-maker must be satisfied that there is sufficiently clear and convincing evidence to support the alleged claim.
- [32] For the reasons below, the Officer finds that the Notice is valid and the Application is denied. The tenancy agreement shall be terminated as of the timeline below.
- [33] The Officer finds that the parties submitted undisputed evidence that the Tenant owed rental arrears for June 2024. As of the date of the hearing, the Tenant was 19 days late paying his share of the rent. During this period of time, the Tenant had further arrears, namely his share of the utility bill for May 2024.
- [34] At the hearing, the Tenant stated he would pay the arrears right away if the Landlord signed the appropriate document. In light of this, the Officer requested the Landlord sign the Tenant's document, as he has done in the past, and to provide the Tenant an opportunity to pay his rental arrears.
- [35] The Officer provided the parties a deadline of Monday, June 24, 2024 at 4:00 p.m. to provide their submissions on whether or not the document was signed, and if the rental arrears were paid.
- [36] The parties' post-hearing submissions establish that the Landlord signed the Tenant's document on Thursday, June 20, 2024. Despite the Landlord signing the document, the Tenant was unable to secure social assistance and confirmed that he was unable to pay his outstanding rental arrears.
- [37] The Tenant suggested that he would pay his outstanding arrears by Friday, June 24, 2024 (which may be an error for Friday, June 28, 2024).
- [38] The Officer finds that based on the testimony from the parties and the post-hearing submissions that the Tenant has not paid his outstanding rental arrears. Further, the Tenant may not be able to pay his outstanding rental arrears for another few days. The Officer notes that the Tenant may not be able to pay July's rent on the first, after paying June's rental arrears and his share of May's utility bill. Therefore, the Officer finds that the Notice is valid and the Application is denied.

Conclusion

- [39] The Notice is valid and the Application is denied.
- [40] The tenancy agreement shall terminate effective 5:00 p.m. on July 5, 2024. The Tenant shall vacate the Residential Property by this time and date.
- [41] This Order will be served to the parties by email.

IT IS THEREFORE ORDERED THAT

- 1. The tenancy agreement shall terminate effective 5:00 p.m. on July 5, 2024. The Tenant shall vacate the Residential Property by this time and date.**
- 2. A certified copy of this Order may be filed with the Supreme Court and enforced by Sheriff Services as permitted by the Act.**

DATED at Charlottetown, Prince Edward Island, this 26th 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.