

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 3, 2024 the Landlords filed a *Form 2 (B) Landlord Application to Determine Dispute* (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 Landlords in possession, which is the subject of this decision. The Application also included a claim for rent owing, which is the subject of Order LD24-207.
- [3] On June 6, 2024 one of the Landlords (the “Landlord”) personally delivered the Application to the Tenant.
- [4] The Application was supported by an *Eviction Notice (Form 4 (A))* (the “Notice”).
- [5] The Notice dated May 10, 2024 effective May 31, 2024 was served by the Landlord to the Tenant on May 10, 2024 by posting the Notice to the front door of the Rental Unit for the following reason:

You have not paid your rent in the amount of \$370.00 March / \$200.00 April / \$700.00 May \$1,270.00.

The particulars of termination state:

“I have tried to contract multiple times over 4 months for rent. Rents have been paid late for over 1 year. Hand delivered Notice on May 10, 2024.”

- [6] On June 17, 2024 the Rental Office mailed the parties notice of a teleconference hearing (the “Notice of Hearing”), along with a copy of the Application. The Rental Office also emailed a copy of the Notice of Hearing to the Landlord, and on June 17, 2024, the Landlord posted the Notice of Hearing to the front door of the Rental Unit.
- [7] On June 21, 2024 the Rental Office emailed the evidence package (the “EP”) to the Landlord.
- [8] On June 25, 2024 at 11:18 a.m., the Landlord emailed the Rental Office with photographs of the Landlord personally delivering the EP to the Tenant. The EP contains 33 pages of documents submitted by the Landlords.
- [9] On June 25, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord participated, but the Tenant did not call into the teleconference hearing. The Officer postponed the hearing for 10 minutes and attempted to contact the Tenant. The Tenant did not have an email and the phone number provided was out of service. The Officer was satisfied with the Landlord’s evidence that the Tenant was properly served all the relevant documents, namely the Application, the Notice of Hearing and the EP. The hearing proceeded in the Tenant’s absence.

ISSUE

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

SUMMARY OF THE EVIDENCE

- [10] The Rental Unit is situated in a triplex (the “Residential Property”).
- [11] In January 2023 the Tenant took over the tenancy agreement. In September 2023 the parties renewed the tenancy agreement with a written, fixed-term agreement for the period of September 1, 2023 to August 31, 2024. Rent is \$700 due on the first day of the month. No security deposit was required.

LANDLORDS' EVIDENCE AND SUBMISSIONS

- [12] The Landlords submitted 33-pages of documents into evidence including: photographs of proof of service, and text messages between the parties.
- [13] The Landlord stated that the Tenant has repeatedly had issues paying the rent. The Landlord stated that he would regularly have to chase the Tenant to collect the rent.
- [14] The Landlord stated that the last payment for rent he received was \$500.00 in April 2024.
- [15] On May 10, 2024 he served the Tenant with the Notice.

ANALYSIS & CONCLUSION

- [16] The Application is made in accordance with clause 75 of the Act. The reason for the termination of the tenancy is pursuant to clause 60(1) of the Act, which states:

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.*

- [17] The Landlord bears the onus of proving his claim on a balance of probabilities. This means that a decision-maker must be satisfied that there is sufficiently clear and convincing evidence to support the claim.
- [18] The evidence establishes that at the time the Notice was served the Tenant owed \$1,270.00 in rental arrears.
- [19] The Tenant did not pay the outstanding rental arrears 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.*

- [20] The Tenant remains in arrears since the date of the Notice was served. During this time the Tenant now owes an additional \$700.00 for June rent.
- [21] 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.*

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

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

IT IS THEREFORE ORDERED THAT

- I The tenancy between the parties shall terminate effective 5:00 p.m. on July 5, 2024. The Tenant must vacate the Rental Unit by this time and date.**
- II 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 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.