

**INTRODUCTION**

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 11, 2024 the Landlord’s representative (the “Representative”) 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 Landlord in possession.
- [3] On June 11, 2024 the Representative emailed the Application to the Tenant. A copy was also posted on the front door of the Rental Unit.
- [4] The Application was supported by a *Form 4 Notice of Termination by Lessor of Rental Agreement* (the “Notice”).
- [5] The Notice was dated May 15, 2024 effective June 4, 2024, and was served by the Representative to the Tenant on May 15, 2024 by hand delivery for the following reason:
- You have failed to pay your rent in the amount of \$1,100.00, which was due on the 1<sup>st</sup> day of \$450/April, \$650/MAY, 2024.*
- [6] On June 18, 2024 the Rental Office emailed and mailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [7] On June 25, 2024 the Rental Office emailed the evidence package (the “EP”) to the parties.
- [8] On July 2, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Representative 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, only reaching voicemail. The hearing proceeded in the Tenant’s absence.

**ISSUE**

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

**SUMMARY OF THE EVIDENCE**

- [9] The Rental Unit is situated in a 10-unit apartment building.
- [10] On February 26, 2024 the parties entered into a written, month-to-month tenancy agreement. Rent is \$650.00 due on the first day of the month. A \$350.00 security deposit was paid by an internal program offered by the Landlord.

**LANDLORD’S EVIDENCE AND SUBMISSIONS**

- [11] The Landlord submitted 19-pages of documents into evidence including: proof of service, a copy of the tenancy agreement, and copies of emails.
- [12] The Representative stated that the Tenant has not paid any rent since April 2024. The Representative stated that the last payment was \$200.00 in April 2024 by a Church on behalf of the Tenant. The Tenant has not paid all of April rent, along with May, June and July 2024 rent.
- [13] The Representative stated that the Landlord is not seeking a monetary order, just possession of the Rental Unit. The Representative stated that she attempted to work with the Tenant by offering subsidies and payment plans. The Tenant has not communicated and has not shown interest in working with the Landlord.

## ANALYSIS & CONCLUSION

### Proper Termination Notice

- [14] The Landlord should have completed a *Form 4 (A) Eviction Notice* made pursuant to the Act (see clause 53(f)).
- [15] Instead, the Landlord used a *Notice of Termination by Lessor of Rental Agreement (Form 4)* prescribed by the *Rental of Residential Property Act Regulations*, EC 10/89, which was repealed on April 8, 2023.
- [16] Although the Landlord used an incorrect form, the Officer finds that the form used does not invalidate the Notice. Clause 30 of the *Interpretation Act* RSPEI 1988, I-8.1 states:

*Where an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if*

- (a) the deviations do not affect the substance;*
- (b) the deviations are not likely to mislead; and*
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.*

- [17] Evictions for non-payment of rent pursuant to clause 60 of the Act (in force starting April 8, 2023) are similar to evictions made pursuant to clauses 13 and 16 of the repealed *Rental of Residential Property Act* RSPEI 1988, R-13.1. Both clauses contain the following rules:
- A termination notice can be served the day after rent is due;
  - The notice can be invalidated by full payment of rent within 10 days of service;
  - A tenant can file an application disputing the notice within ten days of service;
  - There is a minimum 20-day vacate date from the date of service; and
  - There is deemed acceptance of the notice where the full amount of rent outstanding is not paid and an application has not been filed.
- [18] The standard form eviction notices for non-payment of rent are similar under the former and current rental laws. The Officer has reviewed both forms and is satisfied that the elements of clause 30 of the *Interpretation Act* have been met. The Officer finds that the deviations between the forms do not invalidate the Notice.

### The Eviction

- [19] 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.*

- [20] The Landlord bears the onus of proving its 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.
- [21] The evidence establishes that at the time the Notice was served the Tenant owed \$1,100.00 in rental arrears (\$450.00 for April 2024 and \$650.00 for May 2024).

[22] 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.*

[23] The Tenant remains in arrears since the date of the Notice was served. During this time the Tenant now owes rent for June and July 2024.

[24] 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 agreement between the parties shall terminate effective 5:00 p.m. on July 9, 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 2nd day of July, 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.