

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 24, 2024, the Landlord filed an amended *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 of the unit.
- [3] The Application also included a claim for rent owing, which is the subject of Order LD24-226.
- [4] The Application was supported by a *Form 4 (A) Eviction Notice* (the “Notice”). The Notice was dated May 5, 2024, effective May 25, 2024, and was served by the Landlord to the Tenant on May 5, 2024, by hand delivery for the following reason:

You have not paid your rent in the amount of \$420.

The particulars of termination state:

“No rent paid to date!”

- [5] On July 9, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord and the Tenant participated in the hearing.

ISSUE

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

SUMMARY OF THE EVIDENCE

- [6] The Rental Unit consists of a room rental with shared common spaces in a 6-room building (the “Residential Property”).
- [7] The Tenant stated he moved into the Rental Unit around July of 2012 and he had an oral month-to-month tenancy agreement with a previous landlord. On April 15, 2024, the Landlords purchased the Residential Property and the oral tenancy agreement continued. Rent is \$425.00 due on the first day of the month. A security deposit was not required.

LANDLORD’S EVIDENCE AND SUBMISSIONS

- [8] The Landlord’s evidence is summarized as follows. The Tenant has not paid rent for May 2024, June 2024, or July 2024, but he is just seeking rent owing for May and June totaling \$850.00. Before purchasing the Residential Property, the parties had a discussion about the Tenant doing some work for payment in lieu of rent, as the Tenant did some work around the building for the previous landlord. The Landlord advised the Tenant if there was work available the Tenant would be notified but there was no guarantee of work, as the Landlord would be performing the duties the previous landlord asked the Tenant to do.
- [9] After the Landlords took ownership of the building, the Tenant was notified there was some cleaning and labour work available. The Tenant was not interested in performing these duties and the Landlord notified the Tenant that there was no other work for the Tenant to do. On April 25, 2024, the Landlord asked the Tenant to return all the keys for the building and notified the Tenant that he would be required to pay the full rent.

- [10] After the Tenant received the Notice, the Tenant advised the Landlord that he was not leaving until the Sheriff evicts him. The Landlord denied refusing to take rent from the Tenant and stated the Tenant has never offered to pay the outstanding rent. During the hearing the Landlord agreed to meet the Tenant after the hearing so he could pay the outstanding rent.

TENANT'S EVIDENCE AND SUBMISSIONS

- [11] The Tenant's evidence is summarized as follows. The parties had an agreement that the Tenant could do work for the Landlord in lieu of rent as he did this for the previous landlord. The Tenant would often do extra work and would sometimes get paid by the previous landlord. The agreement with the previous landlord was that the Tenant just had to look after things or clean the bathroom and the agreement did not include the type of work the Landlord was asking him to do.
- [12] On April 15, 2024, the Landlord changed the agreement of work in lieu of rent, and the Tenant did not have enough time to get the money to pay rent. The Landlord knew the Tenant would not have the money to pay the rent when he was served with the Notice and the Landlord served the Notice just to evict him.
- [13] The Tenant acknowledged he could have borrowed the money from someone. The Tenant did get the rent money approximately 13 days after receiving the Notice but the Landlord refused to take the money. The Tenant acknowledged that he has not paid the outstanding rent but he does have money to pay the rent for May and June. He has tried to pay the rent but the Landlord refuses to take it. During the hearing the Tenant stated he would pay the rent after the hearing but he kept stating reasons why the Landlord would not accept the rent.

ANALYSIS & CONCLUSION

- [14] 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.*
- 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.*
- [15] The evidence establishes that at the time the Notice was served the Tenant owed \$425.00 for rent for May 2024. The Officer notes that the Landlord incorrectly wrote on the Notice that the Tenant had not paid rent in the amount of "\$420" however, based on the testimony of the parties, the Officer is satisfied the Tenant was aware that the Notice was served for non-payment of rent for May 2024 in the amount of \$425.00. The Officer amends the Notice pursuant to clause 85.(1)(l) of the Act.
- [16] The Tenant stated he had an agreement with the previous landlord that he could perform work around the Residential Property in lieu of rent. The Tenant stated the Landlord changed the agreement regarding the type of work he had to do, which left the Tenant unable to pay rent on time. The Landlord stated he offered the Tenant work but the Tenant refused as it was different work than what the previous landlord required.

- [17] During the hearing the Landlord gave the Tenant several options as to how he could pay the outstanding rent after the hearing. However, the Officer notes that while the Tenant stated he had the outstanding rent money and wanted to pay it, the Tenant kept stating reasons why the Landlord would not take the rent. As of the date of this Order, there is no evidence that the rent has been paid.
- [18] The parties agreed the Landlord offered the Tenant work in lieu of rent, however the Tenant refused to perform the work that was offered. As there is no written tenancy agreement and the previous landlord did not provide evidence at the hearing, the Officer is unable to determine what kind of agreement, if any, the Tenant may have had with the previous landlord for work in lieu of rent. The Officer finds that the Landlord has provided sufficient evidence to establish that the Tenant failed to pay the required rent for May, June, and July 2024.
- [19] The Officer finds the Tenant did not pay the outstanding rental arrears within ten days of being served the Notice and there is no evidence that the Tenant had filed an application to dispute the Notice within 10-days. Therefore, the Notice was not invalidated pursuant to clause 60(4)(a) of the Act.
- [20] The Notice is valid and the Application is allowed. The Tenant must vacate the Rental Unit by the timeline below.
- [21] In Order LD24-226, the Officer found that the Tenant must pay the Landlord of \$850.00 by August 2, 2024.
- [22] This Order will be emailed to the parties.

IT IS THEREFORE ORDERED THAT

- I. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on July 19, 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 12th day of July, 2024.

(sgd.) Mitchell King

Mitchell King
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.