

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On July 10, 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, which is the subject of this decision. The Application also included a claim for rent owing, which is the subject of Order LD24-244. The Application was emailed to the Tenant.
- [3] The Application was supported by an *Eviction Notice (Form 4 (A))* (the “Notice”).
- [4] The Notice dated June 2, 2024 effective June 23, 2024 was served by the Representative to the Tenant by email for the following reason:

You have not paid your rent in the amount of \$600.00 for June plus \$1,800.00 for prior months.

The particulars of termination state:

June rent payment is late.

May rent payment is still due and owing.

April rent payment is still due and owing. March rent payment is still due and owing.

- [5] On July 18, 2024 the Rental Office emailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [6] On July 23, 2024 the Rental Office emailed the parties a copy of the evidence package (the “EP”).
- [7] On July 25, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Representative and the Tenant participated at the hearing.

ISSUE

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

SUMMARY OF EVIDENCE

- [8] The Rental Unit is a mobile home owned by the Landlord, and the Landlord has a separate tenancy agreement to rent the land on which the Rental Unit resides.
- [9] On May 1, 2021 the parties entered into a written, month-to-month tenancy agreement. Rent is \$600.00 due on the first day of the month. A \$500.00 security deposit was paid on April 30, 2021.

LANDLORD’S EVIDENCE AND SUBMISSIONS

- [10] The Landlord submitted ten pages of documents into evidence including: proof of service, a copy of the Notice, a copy of the Application, and the tenancy agreement.
- [11] The Representative stated that the Tenant has not paid rent since February 2024. On March 2, 2024 he sent a message to the Tenant regarding the due rent. The Tenant replied that he would pay the rent within the following week. The Representative stated that the Tenant never paid the rent. The Representative stated that March, April, May, June and July 2024 rent has not been paid.

- [12] The Representative stated that he regularly asked the Tenant about his rental arrears, but nothing was ever paid. On May 2, 2024 an eviction notice for non-payment of rent was given to the Tenant. The Representative stated that he did not follow through with that eviction.
- [13] The Representative stated that on June 2, 2024 he served the Notice and wants to have the Tenant evicted for non-payment of rent.
- [14] In response to the Tenant's submissions, the Representative stated that there were discussions that the Tenant would do some work for him to assist in paying some of the rental arrears, however, at the time, the Representative did not have the additional money for the materials required to complete the work. The Representative stated that there was no agreement for the Tenant to do work for the Landlord.

TENANT'S EVIDENCE AND SUBMISSIONS

- [15] The Tenant submitted twenty pages of documents into evidence including: written submissions, emails, and text messages.
- [16] The Tenant admitted that he did not pay rent since February 2024. The Tenant stated that due to unfortunate circumstances, his employment was not available in the Spring of 2024. The Tenant stated that this caused financial hardship and he was unable to pay the rent. The Tenant stated that he looked for employment and a new place to live. The Tenant stated that as of June 2024 he is employed full time.
- [17] The Tenant stated that he uses an alternative email, which is why he was delayed in responding to the Representative's emails. The Tenant stated that he wanted to setup a payment plan with the Representative, however, the Representative denied the suggestion.
- [18] The Tenant stated that he believed there was an agreement with the Representative to complete some work in the Rental Unit. The Tenant stated that he was waiting for the materials to start the work but the Representative did not supply the materials.

ANALYSIS & CONCLUSION

- [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 rental arrears for March, April, May and June 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 the Notice was served, and the Tenant now owes rental arrears for July 2024.

[24] The Officer notes that clause 60(5) of the 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.*

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

[26] 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 August 7, 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 31st 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.