

INTRODUCTION

- [1] On July 24, 2024 the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* (the "Application") with the Residential Tenancy Office (the "Rental Office") pursuant to the *Residential Tenancy Act* (the "Act"). The Application seeks vacant possession of the Unit and an order for the Sheriff to put the Landlord in possession, which is the subject of this decision.
- [2] The Application also included a claim for rent owing, which is the subject of Order LD24-268.
- [3] Attached to the Application was an *Eviction Notice (Form 4(A))* served on June 27, 2024 or June 28, 2024 by the Landlord to the Tenant for non-payment of rent in the amount of \$2,561.00 (the "Notice"). The effective date was July 17, 2024.
- [4] On August 8, 2024 the Rental Office emailed the Landlord notice of a teleconference hearing scheduled for 11:00 a.m. on August 20, 2024 (the "Notice of Hearing"), along with a copy of the Application. The Landlord was requested to serve a copy of the Notice of Hearing to the Tenant.
- [5] On August 12, 2024 the Landlord taped an envelope to the door of the Unit containing the Notice of Hearing. The Rental Office mailed a copy of the Application and the Notice of Hearing to the Tenant.
- [6] On August 19, 2024 the Tenant made a request to the Rental Office for an adjournment to the scheduled hearing.
- [7] At 11:00 a.m. on August 20, 2024 the Residential Tenancy Officer (the "Officer") and the Landlord joined the teleconference hearing. The Tenant did not connect to the teleconference and the hearing was adjourned to 1:00 p.m. the same day.
- [8] At 1:00 p.m. on August 20, 2024 the Officer, the Landlord and the Tenant joined the teleconference hearing. The parties were permitted to submit additional documents after the hearing.

ISSUE

- i. Does the Tenant and all occupants have to vacate the Unit pursuant to the Notice?

SUMMARY OF EVIDENCE

- [9] The Unit has two bedrooms and one bathroom and is one side of a duplex building.
- [10] The Landlord and the Tenant entered into an oral tenancy agreement that commenced in mid-June of 2018. Rent is due on the first day of the month and a \$300.00 security deposit was paid.

Landlord's Evidence and Submissions

- [11] The Landlord's evidence is summarized as follows.
- [12] The Landlord is seeking to end the tenancy for non-payment of rent. The Notice was served on June 27, 2024 and the amount of rent owing at that time was \$2,561.00. The Tenant did not pay any rent after the Notice was served.
- [13] At the hearing the Landlord stated that the Tenant had a \$25.00 credit as of September 18, 2023. The Landlord stated that the Tenant made the following payments:
- September 26, 2023 - \$750.00 by cheque
 - December 10, 2023 - \$525.00
 - February 2, 2024 - \$640.00

- April 4, 2024 - \$644.00

- [14] The Landlord's additional evidence provided after the hearing shows that the \$525.00 payment was automatically deposited to the Landlord's bank account on November 10, 2023. The Tenant's message accompanying the e-Transfer states "*November rent.*"
- [15] The Tenant's \$644.00 payment listed above was automatically deposited on April 12, 2024.
- [16] The Landlord stated that the rent history provided by the Tenant at the hearing was accurate.
- [17] The Landlord stated that the March 12, 2022 document submitted into evidence by the Tenant was a document he had prepared. The Landlord stated that he did not provide the Tenant with a Rental Office form regarding the rent increase stated in the March 12, 2022 document.

Tenant's Evidence and Submissions

- [18] The Tenant's evidence is summarized as follows.
- [19] At the hearing the Tenant agreed with the payment amounts and dates stated by the Landlord.
- [20] The Tenant stated that, at the time the \$525.00 payment was made, the Tenant's rent was paid up to date. The Tenant stated that the Landlord was charging \$625.00 in rent at that time and the Tenant had previously paid \$100.00 of the month's rent when the \$525.00 payment was made.
- [21] The Tenant stated that she made an additional payment after April 4, 2024 but she would need to check her bank records after the hearing.
- [22] The Tenant provided bank records after the hearing which show the following payments from November 2023 onwards:
- November 10, 2023 - \$525.00
 - February 2, 2024 - \$640.00
 - April 12, 2024 - \$644.00
 - May 10, 2024 - \$644.00
- [23] The message from the Tenant accompanying the May 10, 2024 e-Transfer states:
- "Rent, will have more money for you on the 15th."*
- [24] The Tenant provided the following rent history for the Unit:
- Mid-June 2018 to April 2022 - \$610.00 per month
 - May 2022 to December 2023 - \$625.00 per month
 - January 2024 to present - \$644.00 per month
- [25] The Tenant stated that the Landlord had not properly increased the rent for the Unit. The Tenant provided a hand written notepad document from the Landlord that states in part as follows:

"March 12/2022

Rent on [Unit] will increase to \$625/month beginning May 1/2022..."

ANALYSIS**Rent Outstanding**

[26] The Landlord's basis for terminating the tenancy is pursuant to subsection 60(1) of the *Residential Tenancy Act* (the "Act"), which states:

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.

[27] The evidence of the parties regarding the amount of rent paid is highly consistent. The e-Transfer documents submitted by the parties after the hearing show identical payments from November 2023 onwards except that the Tenant's evidence included an additional e-Transfer payment on May 10, 2024, in the amount of \$644.00. The Officer is satisfied by the May 10, 2024 document that this \$644.00 rent payment was in fact made to the Landlord.

[28] The Tenant's evidence regarding the rent charges and payments since November 2023 is consistent with the amount of rent owing stated in the Notice, being \$2,561.00 as of June 27, 2024.

[29] The Tenant stated that the rent was paid in full at the time the \$525.00 payment was made, being November 10, 2023.

[30] The rent charged by the Landlord from December 2023 to June 2024 was \$4,489.00 (\$625.00 for December 2023 and \$3,864.00 for January to June 2024). The rent paid during this period, including the May 10, 2024 payment, was \$1,928.00 (\$640.00 on February 2, 2024; \$644.00 on April 12, 2024; and \$644.00 on May 10, 2024). Therefore, the balance owing was \$2,561.00 (\$4,489.00 minus \$1,928.00) as of June 27, 2024, the amount in the Notice.

[31] With the payments of \$640.00 on February 2, 2024, \$644.00 on April 12, 2024, and \$644.00 on May 10, 2024, the Tenant had paid the rent charged in full up to February 2024, plus \$15.00 for March 2024 rent.

Rent Overpayment

[32] The evidence of the parties establishes that the rent increased from \$610.00 to \$625.00 as of May 1, 2022. This was a 2.46% rent increase.

[33] The 2022 annual allowable increase permitted by the Island Regulatory and Appeals Commission was 1.0%.

[34] At the time that the 2022 rent increase occurred the *Rental of Residential Property Act* was in force. To validly make the rent increase the Landlord was required to serve the Tenant with a standard form rent increase notice, file a greater than allowable rent increase application with the Rental Office, attend a hearing, and obtain an order approving the rent increase.

[35] The Landlord did not follow this process and therefore the rent increase from \$610.00 to \$625.00 was not valid. The evidence does not establish that the Landlord was permitted to charge more than \$610.00 per month for the Unit.

[36] Therefore, the Officer credits the Tenant with \$15.00 per month from May 2022 to December 2023, in the amount of \$300.00 (20 months multiplied by \$15.00). The Officer credits the Tenant \$68.00 for January and February 2024 (\$34.00 multiplied by two months). The Tenant also paid \$15.00 for March 2024. These amounts total \$383.00.

- [37] As noted above, the Tenant paid the rent in full up to February 2024. The Officer credits \$383.00 to the rent of \$610.00 payable for March 2024, leaving a balance of \$227.00 owing. The Tenant did not pay the rent for April, May and June 2024 in the amount of \$1,830.00 (3 months multiplied by \$610.00). Therefore, at the time the Notice was served, the Tenant owed \$2,057.00 in rent to the Landlord.
- [38] The Tenant did not pay the rental arrears within ten days of being served with the Notice. Therefore, the Notice was not invalidated pursuant to clause 60(4)(a) of the *Act*, which states:
- 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.*
- [39] The Officer finds that the Notice is valid and the Application is allowed. The Tenant and all occupants must vacate the Unit by the timeline below.
- [40] The Officer also notes that the Tenant ought to have filed a *Tenant Application to Determine Dispute (Form 2(A))* within ten days of being served with the Notice to properly dispute the Notice.
- [41] The evidence also establishes that the Tenant has not paid rent for July and August 2024 (\$1,220.00). Therefore, the total amount of rent owed by the Tenant to the Landlord up to August 31, 2024 is \$3,277.00 (\$2,057.00 plus \$1,220.00).

CONCLUSION

- [42] The Notice is valid and the Application is allowed. The Tenant and all occupants must vacate the Unit by the timeline below.
- [43] If the Landlord wishes to increase the Unit's rent for 2024, the Landlord will need to follow the process outlined in the *Residential Tenancy Act*, which has been in force since April 8, 2023.
- [44] The form to increase the rent by 3.0% in 2024 is the *Tenant Notice of Annual Allowable Rent Increase (Form 8)*, which is available at the Rental Office's website. If the Landlord has questions about completing a rent increase, then the Landlord can contact the Rental Office for more information.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the parties shall terminate effective **5:00 p.m. on August 31, 2024**. The Tenant and all occupants must vacate the Unit by this time and date.
2. 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 21st day of August, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the “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.