

**INTRODUCTION**

- [1] On June 21, 2024 the Landlord filed two *Landlord Applications to Determine Dispute (Form 2(Bs))* (the "Landlord's First Applications") with the Residential Tenancy Office (the "Rental Office") pursuant to the *Residential Tenancy Act* (the "Act"). These applications seek vacant possession of the Unit and an order for the Sheriff to put the Landlord in possession. The particulars state as follows:

*"Tenants were to leave by June 20/24. Still leaving there. Order in place."*

- [2] The Landlord's First Applications were not accompanied by any *Eviction Notices*. Instead, the Landlord purported to provide oral notices of termination to the Tenants.
- [3] On June 24, 2024 the Tenants filed two *Tenant Applications to Determine Dispute (Form 2(As))* (the "Tenants' Applications") with the Rental Office with monetary claims against the Landlord for unlawful rents.
- [4] On July 29, 2024 the Landlord filed two additional *Landlord Applications to Determine Dispute (Form 2(Bs))* (the "Landlord's Second Applications") with the Rental Office seeking vacant possession of the Unit and an order for the Sheriff to put the Landlord in possession. These applications also seek rent owing by the Tenants.
- [5] Attached to the Landlord's Second Applications were two *Eviction Notices (Form 4(As))* served on July 4, 2024 by the Landlord to the Tenants for non-payment of rent in the amount of \$1,044.00 (the "Notices"). The effective date of the Notices was July 14, 2024. The Officer notes that the effective date was too early because the minimum period from the date of service was 20 days (subsection 60(1) of the *Act*). However, the effective date is automatically changed to July 24, 2024 pursuant to section 54.
- [6] On August 1, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on August 15, 2024, along with copies of the six applications.
- [7] On August 14, 2024 the Rental Office emailed the parties a 43-page evidence package.
- [8] On August 15, 2024 the Landlord and the Tenants participated in a teleconference hearing with the Residential Tenancy Officer (the "Officer"). The parties were permitted to submit additional evidence after the hearing.

**ISSUES**

- i. Do the Tenants have to vacate the Unit pursuant to oral notices of termination?
- ii. Did the Landlord charge the Tenants unlawful rents? Do the Tenants owe rent to the Landlord?
- iii. Do the Tenants have to vacate the Unit pursuant to the Notices?

**SUMMARY OF EVIDENCE**

- [9] The Unit is a single bedroom in a three-bedroom, one-bathroom townhouse (the "Residential Property").
- [10] The Landlord and the former owner of the Residential Property entered into an oral, month-to-month tenancy agreement for the Residential Property that commenced in September of 2009 (the "Primary Agreement").
- [11] Rent in the amount of \$780.00 is due on the first day of the month and a security deposit was not required. Electricity, internet and furnishings were not included services in the Primary Agreement.

- [12] In July of 2023 the former owner sold the Residential Property to the current owner (the "Owner") and the Primary Agreement continued.
- [13] The Landlord and the Tenants entered into two separate oral, month-to-month tenancy agreements (the "Sublet Agreements") for the Unit that commenced on April 20, 2024. Rent in the amount of \$600.00 per Tenant was due each month and a security deposit was not required. All rent payments were made by e-Transfer.
- [14] On May 27, 2024 the Owner served the Landlord with an *Eviction Notice (Form 4(A))* (the "Primary Notice") to end the Primary Agreement because the Landlord entered the Sublet Agreements without the Owner's consent.
- [15] On June 3, 2024 the Landlord filed an application with the Rental Office disputing the Primary Notice and on June 18, 2024 a hearing was held. Order LD24-200 was issued on June 20, 2024 which dismissed the Primary Notice.
- [16] On June 21, 2024 the Owner appealed Order LD24-200 to the Island Regulatory and Appeals Commission and a hearing was held on July 10, 2024. Order LR24-46 was issued on July 26, 2024 which dismissed the Owner's appeal and confirmed Order LD24-200.

### Landlord's Evidence and Submissions

- [17] The Landlord's evidence is summarized as follows.
- [18] The Landlord stated that she did not prepare written tenancy agreements with the Tenants. The Landlord stated that she is illiterate.
- [19] The Tenants did not have food when they first moved in. The Landlord bought the Tenants \$15.00 bags of rice, bananas, chicken and other things. The Landlord made the Tenants biscuits and bread and did laundry three days per week. The Landlord treated the Tenants like family and considered the Residential Property their home. The Landlord stated that she did not provide the Tenants with food every day.
- [20] The Landlord pays for electricity and internet, which are not included in the Primary Agreement. The Tenants used the Landlord's electricity and internet. The Landlord submitted into evidence the following bills:
- Maritime Electric
- 2 APR 2024 to 2 MAY 2024 – \$203.99
  - 2 MAY 2024 to 3 JUN 2024 – \$233.39
  - 3 JUN 2024 to 3 JUL 2024 – \$223.77
  - 3 JUL 2024 to 29 JUL 2024 (final billing) – \$145.96
- Bell
- 21 May 2024 - \$183.74
  - 21 JUN 2024 - \$146.86
  - 21 JUL 2024 - \$146.86
- [21] The Landlord owned the following items in the Residential Property used by the Tenants: refrigerator, deep freeze, stove, washer, dryer, queen-size bed, dresser, and tables. When the Landlord moved out of the Residential Property on July 30, 2024, she left the deep freeze, queen-size bed, dresser and some tables. The Owner put a refrigerator and a stove in the Residential Property after the Landlord moved out.

- [22] In May of 2024 it appeared to the Landlord that the landlord-tenant relationship with the Tenants would not work out. The Landlord stated that the Tenants were provided with word-of-mouth eviction notices. The Landlord's friend, K.V., was present when the oral notices were given. The Landlord submits that oral notice means the Tenants were ordered to move out of the Unit, as described in the particulars of the Landlord's First Applications.
- [23] The Landlord also seeks to end the Sublet Agreements pursuant to the Notices. As of July 4, 2024 the Tenants had only paid rent of \$156.00 each for June and July 2024.
- [24] The Landlord agreed with the Tenants' testimony regarding the dates and amounts of their rent payments.
- [25] The Landlord had another subtenant renting a different bedroom in the Residential Property, accompanied by the subtenant's spouse. The other subtenant and their spouse moved out on June 30, 2024.
- [26] The Landlord stated that everything was fine with the Tenants until the Owner became involved. At that point things went "berserk."
- [27] In July of 2024 the Landlord told the Owner that she would be ending the Primary Agreement as of August 31, 2024. The Landlord moved out of the Unit on July 30, 2024 and cancelled the internet services. The Owner took over the Maritime Electric services and the Landlord is unsure whether she will be billed for August 2024.
- [28] On August 4, 2024 the Landlord attended the Residential Property and discovered that the locks had been changed.

#### Tenants' Evidence and Submissions

- [29] The Tenants' Evidence is summarized as follows.
- [30] The Tenants dispute that food was included in the Sublet Agreements. The Landlord told the Tenants that she would do the laundry because she did not want the Tenants using her machines.
- [31] After the Landlord moved out of the Residential Property the Owner installed a refrigerator, stove, washer, dryer, microwave, blender, and a television in the Residential Property. The Landlord changed the Wi-Fi password when she left and the Tenants then used the Owner's Wi-Fi.
- [32] The Tenants' e-Transfer documents show the following payments to the Landlord:
- April 21, 2024 - \$400.00
  - April 26, 2024 - \$800.00
  - May 23, 2024 - \$1,200.00
  - Undated - \$312.00
  - Undated - \$312.00
- [33] The Tenants stated that they paid \$312.00 on June 22, 2024 and \$312.00 again on July 19, 2024.
- [34] The Tenants stated that the rent is due on the twentieth day of the month.
- [35] The Tenants believe that the Landlord owes the Tenants money because they were overcharged rent. The Tenants submit that they should only pay \$156.00 each per month because the Landlord only pays rent of \$780.00 per month to the Owner and five people were living in the Residential Property.

- [36] The particulars of the Tenants' Applications state that the other two subtenants in the Residential Property paid the Landlord \$1,000.00 per month.
- [37] The Tenants have spoken with the Owner about signing a tenancy agreement but nothing has been signed as of the hearing date. The Owner told the Tenants that they should not move out.

## ANALYSIS

### i. Do the Tenants have to vacate the Unit pursuant to oral notices of termination?

- [38] In the Landlord's First Applications the Landlord sought to end the Sublet Agreements by oral notices of termination to the Tenants.
- [39] Section 53 of the *Act* provides the following form and content requirements of a notice of termination:

*In order to be effective, a notice of termination shall be in writing and shall*

*(a) be signed and dated by the landlord or tenant giving the notice;*

*(b) give the address of the rental unit;*

*(c) state the effective date of the notice;*

*(d) except for a notice of termination under section 56, state the grounds for ending the tenancy;*

*(e) be given to the other party in accordance with section 100; and*

*(f) when given by a landlord, be in the approved form.*

- [40] The Landlord was required to serve written notices of termination to the Tenants that met all of the requirements of section 53. The Landlord cannot rely on any oral notice of termination to end the Sublet Agreements.
- [41] As a result, the Officer finds that the oral notices of termination are invalid and the Landlord's First Applications are denied.

### ii. Did the Landlord charge the Tenants unlawful rents? Do the Tenants owe rent to the Landlord?

- [42] The Tenants' Applications seek a return of rent based upon the Landlord charging unlawful rents.
- [43] Subsection 30(8) of the *Act* restricts the amount of rent that can be charged to a subtenant, stating as follows:

*A tenant*

*(a) shall not charge a subtenant more rent than is payable under the tenancy agreement; and*

*(b) where the tenant and the subtenant occupy the rental unit, shall not charge the subtenant more rent than the amount represented by the rent payable under the tenancy agreement, either*

*(i) divided by the number of tenants during the subtenancy, or*

*(ii) apportioned among the tenants in a manner agreed to by them.*

- [44] The Landlord was charging the Tenants a total of \$1,200.00 per month for the Unit, which included a single bedroom. This is \$420.00 more than the Landlord was paying to the Owner for the entire Residential Property, a three-bedroom townhouse.

- [45] The Landlord was also subletting another portion of the Residential Property to an additional subtenant.
- [46] The Landlord's position is that services and facilities were provided to the Tenants in the Sublet Agreements that were not included in the Primary Agreement. However, in this case there is uncertainty regarding the additional services and facilities claimed by the Landlord.
- [47] The Officer notes that, since the *Act* came into force on April 8, 2023, all landlords have been required to prepare written tenancy agreements (subsection 11(1)). The written agreements are required to state the services and facilities included in the rent.
- [48] The Tenants have disputed that some of the services were included in the Sublet Agreements, such as meals and laundry. As indicated above, there could have been clarity regarding the included services had written tenancy agreements been prepared.
- [49] Although the Tenants were provided with internet paid for by the Landlord, the evidence does not establish that the Landlord incurred an additional cost due to the Tenants' use of the internet. Similarly, it would be expected that the Landlord would have a refrigerator, stove, washer and dryer for her own use regardless of whether the Landlord had subtenants.
- [50] With regard to all the additional services and facilities claimed by the Landlord, the evidence does not establish an agreement between the parties for a fair and equal splitting of the applicable costs. For instance, the Landlord could have sought agreement by the Tenants to each pay 20% of the electricity cost.
- [51] Instead, the Landlord charged the Tenants a \$1,200.00 rent that exceeded the Primary Agreement's entire rent (\$780.00) and also the Landlord's monthly Maritime Electric and Bell internet bills since April of 2024.
- [52] In these circumstances, the Officer finds that the lawful rent that can be collected by the Landlord from each of the Tenants is limited to a portion of the Primary Agreement's rent. The Officer will not provide a credit or adjustment regarding any of the additional services or facilities claimed by the Landlord.
- [53] The Tenants have established that the Landlord charged an unlawful rent of \$600.00 per Tenant. The Officer finds that the Tenants were only required to pay the Landlord \$156.00 each per month, as requested in the Tenants' Applications.
- [54] The Landlord's evidence is that she told the Owner that the Primary Agreement would terminate as of August 31, 2024. The rent owing by each of the Tenants for the period of April 20, 2024 to August 31, 2024 totals \$684.39 (4 months multiplied by \$156.00 [\$624.00] plus 12 days divided by 31 days multiplied by \$156.00 [\$60.39]).
- [55] The Tenants each paid \$1,512.00 in rent to the Landlord. Therefore, the Landlord must return rent to each of the Tenants in the amount of \$827.61.

**iii. Do the Tenants have to vacate the Unit pursuant to the Notices?**

- [56] In the Notices the Landlord's basis for terminating the Sublet Agreements is pursuant to subsection 60(1) of 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.*

[57] The Tenants' position is that the monthly rent is due on the twentieth day of the month. The Officer notes that none of the e-Transfer payments were made on or close to the first day of the month. In the absence of a written tenancy agreement providing the rent due date, the Officer accepts that the Tenants' rent is due on the twentieth day of the month.

[58] The Notices were served on July 4, 2024. At that time the total lawful amount of rent due for each of the Tenants was \$468.00 (\$156.00 per month due for April 20, 2024, May 20, 2024 and June 20, 2024). The Tenants had each paid \$1,356.00 in rent as of July 4, 2024. Therefore, as of the date the Notices were served, the Landlord owed rent back to each of the Tenants.

[59] Clause 60(4)(a) of the *Act*, 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.*

[60] As the Landlord owed rent back to the Tenants at the time the Notices were served, the Notices were invalidated pursuant to clause 60(4)(a).

[61] As a result, the claims for delivery of possession in the Landlord's Second Applications are denied.

### CONCLUSION

[62] The oral termination notices and the Notices served for non-payment of rent are invalid. The Landlord's First Applications and Second Applications are denied.

[63] The Tenants' Applications for return of rent are allowed in the amount of \$827.61 for each of the Tenants, to be paid by the timeline below.

[64] The Landlord's evidence at the hearing is that she told the Owner that the Primary Agreement would end as of August 31, 2024. Based upon this evidence, it appears to the Officer that the Tenants may need to enter a tenancy agreement with the Owner if they wish to continue living in the Unit after August 31, 2024.

### IT IS THEREFORE ORDERED THAT

1. The Landlord's oral termination notices and the Notices are invalid.
2. The Landlord will pay the Tenants the amount of \$827.61 each by September 12, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 23rd 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 **20 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.