

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On August 9, 2024 the Landlord’s representative (the “Representative”) taped an *Eviction Notice (Form 4 (A))* (the “Notice”) to the Rental Unit’s front door. The Notice was given to the Tenant for non-payment of rent, with an effective date of August 29, 2024.
- [3] The Notice’s particulars of termination stated:
- “NSF charges June (25\$), July (25\$), August (25\$). Owes partial June rent (\$704.00), July (\$960.00) and August (\$960.00). Also (\$866.00) still owing for damage deposit.”*
- [4] On September 4, 2024 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 LD24-311.
- [5] On September 5, 2024 the Representative emailed the Application to the Tenant.
- [6] On September 13, 2024 the Rental Office emailed the parties a notice of a teleconference hearing, along with a copy of the Application. The Representative taped the hearing notice to the Rental Unit’s front door.
- [7] On September 18, 2024 the Rental Office emailed the parties the evidence package (“EP”).
- [8] On September 19, 2024 at 9:00 a.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

- [9] The Rental Unit is one-half of a side-by-side duplex.
- [10] On August 1, 2023 the parties entered into a written, fixed-term tenancy agreement for possession of the Rental Unit. Upon the expiry of the fixed-term, the tenancy continued month-to-month. Rent is \$960.00 due on the first day of the month. A security deposit of \$933.00 was required; however, only \$67.00 was paid at the beginning of the tenancy.

LANDLORD’S EVIDENCE AND SUBMISSIONS

- [11] The Representative submitted 66-pages of documents into evidence including: the Application, the Notice, the tenancy agreement, a summary of the evidence, a rent ledger for the Rental Unit, and emails with the Tenant.
- [12] The Representative stated that the Tenant has been behind on her rent payments for a very long time. The Representative stated that she has tried to work with the Tenant, and even tried payment plans. The Representative stated that the last rent payment received from the Tenant was on August 29, 2024 in the amount of \$300.00.
- [13] The Representative stated that the total amount owed in arrears is \$3,384.00. This includes \$960.00 for September’s rent, \$25.00 NSF fee and the \$300.00 payment received.

TENANT'S EVIDENCE AND SUBMISSIONS

- [14] The Tenant submitted a 1-page written submission into evidence.
- [15] The Tenant stated that she lost her job in January 2024, which caused financial hardship. The Tenant stated that she developed an addiction which negatively impacted her finances. The Tenant stated that she is not disputing that she owes the rental arrears, and that she should be able to pay \$4,000.00 to the Landlord.
- [16] The Tenant stated that she must have forget about paying the remaining balance of the security deposit.

ANALYSIS & CONCLUSION

- [17] The Application was filed in accordance with section 75 of the Act. The reason for the termination of the tenancy is pursuant to subsection 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.*

- [18] The Landlord commenced the Application pursuant to the Act. The Landlord has the burden of proving its claim by the civil standard of proof, which is on a balance of probabilities. This means that a decision-maker must be satisfied there is sufficiently clear and convincing evidence to support the Landlord's claim.
- [19] The documentary evidence and undisputed testimony from the parties establishes that at the time the Notice was served, the Tenant owed rental arrears for June, July and August 2024.
- [20] The Tenant did not pay the outstanding rental arrears within ten days of being given the Notice. Therefore, the Notice was not invalidated pursuant to subsection 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.*

- [21] The Tenant remained in arrears since the Notice was given, and the Tenant now owes rental arrears for September 2024, along with NSF charges for June, July, August and September 2024.

- [22] Subsection 60(5) of the Act 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.*

- [23] 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.
- [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 Monday, September 30, 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 19th day of September, 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 (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.