

INTRODUCTION

- [1] On April 10, 2024 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") pursuant to the *Residential Tenancy Act* (the "Act"). The Application included claims for rent owing and disposal of abandoned personal property.
- [2] The Tenant is the executor of a deceased tenant (the "Deceased"), who passed away in July of 2022.
- [3] On April 10, 2024 the Landlord emailed a copy of the Application to the Tenant and the Tenant's lawyer.
- [4] On May 17, 2024 the Landlord provided the Rental Office a detailed inventory of the personal property in the Unit.
- [5] On May 30, 2024 the Rental Office contacted the Landlord's lawyer and the Tenant's lawyer to schedule a hearing for determination of the Application. On May 31, 2024 the Rental Office was advised by the Tenant's lawyer's former law firm (the "Firm") that the Tenant's lawyer was no longer counsel of record for the Tenant.
- [6] On June 5, 2024 the Firm provided the Rental Office with a copy of the Supreme Court Order dated May 10, 2024 removing the Tenant's lawyer as counsel of record for the Tenant. On June 10, 2024 the Rental Office provided a copy of the Supreme Court Order to the Landlord's lawyer.
- [7] On June 13, 2024 the Rental Office telephoned the Tenant and a person answered the call who identified herself as the Tenant's sister. The Rental Office requested to speak directly with the Tenant but the person ended the telephone call.
- [8] On June 17, 2024 the Rental Office sent by ordinary mail notice of a teleconference hearing scheduled for 1:00 p.m. on July 18, 2024 (the "Notice of Hearing") to the Landlord's lawyer and the Tenant. On June 18, 2024 the Notice of Hearing was emailed to the parties. On June 19, 2024 the Rental Office sent the Tenant the Notice of Hearing and the Application by registered mail.
- [9] On June 27, 2024 the registered mail letter sent by the Rental Office to the Tenant containing the Notice of Hearing and the Application was returned by Canada Post because it was "refused" by the Tenant.
- [10] On July 11, 2024 a 162-page evidence package (the "Evidence Package") was emailed to the parties. The Evidence Package was also sent to the Tenant by ordinary mail and registered mail.
- [11] On July 18, 2024, prior to the scheduled hearing, the Rental Office left a voicemail message for the Tenant containing the teleconference hearing information.
- [12] On July 18, 2024 at 1:00 p.m. the Residential Tenancy Officer (the "Officer") and the Landlord's lawyer joined the teleconference hearing. The hearing was delayed to provide more time for the Landlord's representative (the "Representative") and the Tenant to join the hearing.
- [13] The Representative later joined the teleconference but the Tenant did not join. The Officer telephoned two numbers for the Tenant but was unable to reach the Tenant. The hearing proceeded in the absence of the Tenant and concluded at 2:40 p.m. During and after the hearing the Landlord provided the Rental Office with contact information for the beneficiary (the "Beneficiary") of the Deceased's estate (the "Estate").

- [14] The Rental Office attempted to contact the Beneficiary pursuant to section 81 of the *Act* because the Beneficiary appeared to be a person likely to be materially affected by the determination of the Application.
- [15] On July 22, 2024 and July 24, 2024 the Rental Office was unable to reach the Beneficiary at the telephone numbers provided by the Representative.
- [16] On July 23, 2024 the Landlord sent the Rental Office a further list providing a breakdown of the Deceased Personal Property that the Landlord is willing to sell, dispose of or store (the "Disposal List").
- [17] On July 24, 2024 the Rental Office sent the Beneficiary a package by registered mail containing a letter from the Rental Office, the Application and a copy of the letters probate for the Estate that were issued on July 25, 2023 (the "Letters Probate").
- [18] On August 7, 2024 the registered mail letter sent by the Rental Office to the Tenant containing the Evidence Package was returned by Canada Post because it was "unclaimed."
- [19] On August 21, 2024 the registered mail sent by the Rental Office to the Beneficiary was returned by Canada Post because it was "unclaimed."

ISSUES

- i. Does the Tenant owe rent to the Landlord?
- ii. Is the Landlord authorized to dispose of the Tenant's personal property in the Unit?

SUMMARY OF EVIDENCE

- [20] The Landlord's evidence is summarized as follows.
- [21] The Unit is a two-bedroom, one-bathroom apartment located in a 42-unit building (the "Residential Property") that the Landlord has owned since November 19, 2018.
- [22] The Tenant already rented the Unit when the Landlord purchased the Residential Property and the tenancy continued. The Tenant occupied the Unit until he passed away in July of 2022. Rent in the amount of \$1,178.67 is due on the first of the month and a security deposit was not required.
- [23] The Landlord submitted into evidence an affidavit from the Representative, correspondence with the Tenant, probate documents, photographs of the personal property in the Unit, a list of the personal property and other documents.
- [24] The Landlord has not served a notice of termination to the Tenant. The Landlord has not received a notice of termination from the Tenant.
- [25] The Landlord's position is that the tenancy subsists and the Tenant remains responsible for paying rent for the Unit. The Tenant provided the Landlord with assurances that the Unit's rent would be paid and requested the Landlord's patience. The Landlord offered to move the Deceased's personal property into storage as there is a storage area in the Residential Property. However, the Tenant and the Tenant's lawyer told the Landlord not to touch the Deceased's personal property and to leave it in the Unit.
- [26] The Landlord continuously followed up with the Tenant and the Tenant's lawyer and received the same response to wait for the legal process to pan out and the Landlord was assured that the rent for the Unit would be paid. The Landlord relied on the Tenant's representations.

- [27] The Landlord and the Landlord's lawyer only learned that the Tenant's lawyer was no longer counsel of record for the Tenant on June 10, 2024, when the Rental Office emailed the Landlord's lawyer the Supreme Court Order dated May 10, 2024.
- [28] The Landlord requests that the tenancy agreement be finally terminated and also requests an order for disposal of the Deceased's personal property.

ANALYSIS

i. Does the Tenant owe rent to the Landlord?

- [29] At common law, a tenancy agreement is not terminated by the death of the tenant. Instead, there is a deemed assignment of the tenancy, which vests in the personal representative (the executor or administrator).¹ This means that, at common law, a tenant's death does not automatically end a tenant's obligation to pay rent for a rental unit.
- [30] The *Rental of Residential Property Act* (the "RRPA") was in force from January 18, 1989 to April 7, 2023. This formal residential rental legislation did not have specific provisions modifying the common law regarding the death of a tenant. The definition of "lessee" (meaning tenant) in subsection 1(g) of the RRPA is consistent with the common law because this definition includes a legal representative.
- [31] The Act has been in force since April 8, 2023. Section 101 states as follows:

Except as modified or varied under this Act, the common law respecting landlords and tenants applies in Prince Edward Island.

- [32] The definition of "tenant" in subsection 1(x) is consistent with the common law because the definition includes a "personal representative."
- [33] The Act modified the common law to allow a personal representative to end a periodic or fixed term tenancy agreement by providing a landlord with one full month's notice. In particular, section 57 of the Act states in part:

(1) A tenant may end a tenancy agreement by giving a notice of termination to the landlord under the following circumstances:

...

(e) the tenant dies and the notice to the landlord is accompanied by evidence of the tenant's death;

...

(2) A tenant may end a fixed-term tenancy under this section by giving the landlord a notice of termination effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice;
and

(b) is the day before the day that rent is payable under the tenancy agreement.

(3) In giving a notice of termination under this section, a tenant shall comply with the requirements of section 53...

¹ Jack Fleming, *Ontario Landlord & Tenant Law Practice* (2024 Edition), at page 534.

- [34] The Tenant had the right to end the tenancy agreement pursuant to subsection 57(1). However, the Landlord's undisputed evidence establishes that the Tenant never served a notice of termination to the Landlord.
- [35] The evidence also establishes that the Landlord did not serve a notice of termination to the Tenant.
- [36] The Landlord's undisputed evidence establishes that the Tenant advised the Landlord that the Tenant did not want the Landlord to touch the Deceased's personal property. The Tenant gave assurances to the Landlord that the rent for the Unit would be paid and then later ignored the Landlord's communications. The Landlord's undisputed evidence establishes that the tenancy agreement has continued despite the prolonged period since the Deceased's passing.
- [37] The Landlord now seeks to terminate the tenancy agreement to prevent further losses.
- [38] The Officer finds that the tenancy agreement is terminated as of September 15, 2024, which is also necessary in order for the Officer to consider the Landlord's claim for disposal of personal property.
- [39] The Officer finds that the Tenant is responsible for unpaid rent for the period of September 1, 2022 to September 15, 2024 in the amount of \$28,877.42 [24 months multiplied by \$1,178.67 per month (\$28,288.08) plus pro-rated September rent, being 15 days divided by 30 days and multiplied by \$1,178.67 (\$589.34)].

ii. Is the Landlord authorized to dispose of the Tenant's personal property in the Unit?

- [40] Subsections 43(1) of the *Act* states:

A tenant is not entitled to leave the tenant's personal property in the rental unit after the tenancy agreement is terminated.

- [41] The Deceased passed away in July of 2022 and the Letters Probate for the Estate were issued to the Tenant on July 25, 2023. The Tenant has had ample time to take custody of the Deceased's personal property and remove it from the Unit.
- [42] The Officer has reviewed the evidence submitted by the Landlord and, based upon this evidence, it appears that most of the Deceased's personal property has limited value and a significant portion of the personal property has no value.
- [43] In particular, the Landlord's photographs show a significant amount of personal property in the Unit. However, the Tenant's affidavit accompanying the application for Letters Probate valued the entirety of Deceased's household furniture, goods, jewellery and clothing in the amount of \$1,700.00 over one year ago. It also appears to the Officer that the Tenant may have already obtained or arranged for the removal from the Unit of some of the items specifically listed in the Tenant's affidavit.
- [44] The Officer finds that the Landlord may sell the items listed in the "For sell items" column of the Disposal List on or after October 16, 2024. The Landlord may sell the items through private sale or public sale (including auction) in accordance with section 43 of the *Act*. If the Landlord is unsuccessful selling any of the "For sell items," then the Landlord may dispose of the remaining "For sell items" through the solid waste disposal system on or after October 31, 2024.
- [45] The Landlord may dispose of the personal property contained in the "Unwanted items" and "Personal Items" columns of the Disposal List through the solid waste disposal system on or after October 16, 2024.

[46] Subsection 43(2) of the *Act* states:

Where a tenant abandons or vacates a rental unit and leaves personal property on the residential property, the landlord shall either
(a) remove the personal property and immediately place it in safe storage; or
(b) store the personal property on the residential property in a safe manner.

[47] The Landlord may immediately remove and store any of the personal property in the Unit in accordance with subsection 43(2).

CONCLUSION

[48] The Application is allowed.

[49] The Tenant must pay the Landlord unpaid rent on the terms stated below.

[50] The Landlord is authorized to dispose of the personal property in the Unit as provided below.

IT IS THEREFORE ORDERED THAT

1. The tenancy agreement between the Landlord and the Tenant is terminated effective September 15, 2024.
2. The Tenant must pay the Landlord unpaid rent in the amount of \$28,877.42 by October 31, 2024.
3. The Landlord may sell the items listed in the "For sell items" column of the Disposal List on or after October 16, 2024. The Landlord may sell the items through private sale or public sale (including auction) in accordance with section 43 of the *Act*. If the Landlord is unsuccessful selling any of the "For sell items," then the Landlord may dispose of the remaining "For sell items" through the solid waste disposal system on or after October 31, 2024.
4. The Landlord may dispose of the personal property contained in the "Unwanted items" and "Personal Items" columns of the Disposal List through the solid waste disposal system on or after October 16, 2024.
5. The Landlord may immediately remove and store any of the personal property in the Unit in accordance with subsection 43(2) of the *Act*.

DATED at Charlottetown, Prince Edward Island, this 20th day of September, 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.