

INTRODUCTION

- [1] The Notice states that the Landlord wants to terminate the tenancy agreement for cause under clauses 60(1), 61(1)(b), (d), (k) and 66(1) of the *Residential Tenancy Act* (or the "Act").
- [2] The Tenant disputes the Landlord's reasons for ending the tenancy agreement.
- [3] The Tenant requests a determination that the Landlord failed to secure the Residential Property.

DISPOSITION

- [4] I find that the Landlord has not established a valid reason for terminating the tenancy agreement.
- [5] I find that the Landlord has not failed to secure the Unit.

BACKGROUND

- [6] The Unit is an apartment situated in an eight-unit building (the "Residential Property").
- [7] In March of 2022 the parties entered into a written, fixed-term tenancy agreement that converted to a month-to-month agreement. Rent is \$1,339.00 due on the first day of the month. A \$1,300.00 security deposit was paid.
- [8] On September 15, 2024 the Landlord's representative (the "Representative") taped a *Form 4 (A) Eviction Notice* (the "Notice") to the front door of the Unit, dated September 15, 2024, and effective October 5, 2024. The Notice was an older version of the Notice, which does not have a particulars of termination section.
- [9] The Notice seeks termination of the tenancy agreement for the following reasons:
1. *You have not paid your rent in the amount of \$339.00;*
 2. *You are repeatedly late in paying rent;*
 3. *You or someone you have allowed on the property have disturbed or endangered others;*
 4. *There is an order requiring the rental unit to be vacated; and*
 5. *Our employment relationship has ended.*
- [10] On September 24, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") to dispute the Notice, and request that the Landlord secure the Residential Property. The Tenant emailed the Application to the Representative.
- [11] On October 2, 2024 the Rental Office emailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [12] On October 11, 2024 the Rental Office emailed the parties an evidence package.
- [13] On October 15, 2024 the Tenant, the Representative and a translator participated in the hearing. Both parties confirmed that they received and reviewed the evidence package.

ISSUES

- A. Must the Tenant vacate the Unit?
- B. Must the Landlord secure the Residential Property?

ANALYSIS**A. Must the Tenant vacate the Unit?****The Notice & The Effective Date**

- [14] The Notice is an outdated version, which does not have a particulars of termination section. The Landlord must use the current form which is available on the Rental Office's website.
- [15] The Representative stated that the Notice has two reasons that were mistakenly selected:
- (l) *there is an order requiring the rental unit be vacated*, pursuant to clause 61(1)(k); and
 - (m) *our employment relationship has ended*, pursuant to clause 66(1) of the Act.
- [16] As a result, I amend the Notice pursuant to clause 85(1)(l) of the Act.
- [17] On September 18, 2024 the Tenant paid the Representative the outstanding rent for September 2024. The Tenant paid the outstanding rent within 10 days of receiving the Notice. Therefore, the reason for non-payment of rent is automatically invalidated pursuant to clause 60(4)(a) of the Act.
- [18] I find that the remaining two reasons on the Notice require that the earliest effective date be October 31, 2024.

The Reasons for Termination

- [19] The Landlord's remaining bases for terminating the tenancy are pursuant to clauses 61(1)(b) and (d) of the Act, which state:
- (1) *A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*
- (b) *the tenant is repeatedly late in paying rent; and*
 - (d) *the tenant or a person permitted on the residential property by the tenant has*
 - (i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) *put the landlord's property at significant risk.*

Repeatedly late paying rent

- [20] The Representative stated that the rent is due on the first day of each month and the Tenant is repeatedly late paying the rent. Since June of 2024 the Tenant has been late paying the rent every month, including October of 2024. The Representative stated that he did not give permission to the Tenant to pay the rent late (see below). The Representative stated that his "ok" response referred to confirmation of receiving the rent payment.
- [21] The Representative stated that he did not give any warning to the Tenant, and did not communicate to the Tenant about paying the rent on time. The first mention of late payment of rent came from the Notice dated September 15, 2024.
- [22] The Tenant stated that she is usually on time with paying rent, however, she started to fall behind. The Tenant stated that she had an oral conversation with the Representative between 6 and 12 months ago regarding paying the rent later in the month.

- [23] The Tenant stated that she received an eviction notice in August of 2023 because of the police breaking the Unit's door. The Tenant stated that the eviction notice was not for non-payment of rent or repeatedly late paying rent. The Tenant stated that the Representative permitted her to stay in the Unit as long as she repaired the door. The Tenant stated that she repaired the Unit's door.
- [24] The Tenant stated that the rent for June of 2024 was late. The rent was paid in two installments on June 2 and June 14, 2024. The Tenant stated that July 2024 rent was not late because she paid \$900.00 early, on June 28, 2024 and the remaining balance on July 2, 2024. The Tenant stated that because July 1 was a holiday, the rent would not be considered late.
- [25] The Tenant stated that if she was going to be late with paying the rent she would text message the Representative, or speak to him at the Residential Property. The Tenant stated that the Representative would say "okay." However, the Representative would often ignore her and/or not respond to her.
- [26] The Tenant stated that on August 4, 2024 she paid \$1,000.00 and the remaining balance later in August of 2024. On or around September 2, 2024 \$1,000.00 was paid for September rent, and the remaining balance was paid on September 18, 2024.
- [27] The Tenant stated that she paid half of October 2024 rent, but did not pay the remaining balance because of the Rental Office hearing date. The Tenant stated that she has October 2024 rent and will pay it after the hearing. The Tenant stated that she will pay rent on the first going forward.
- [28] I have reviewed the evidence of the parties. The evidence of the parties establishes that rent is due on the first day of the month and the Tenant has frequently paid rent after the first day of the month.
- [29] However, the evidence also establishes that the Landlord has accepted late rent payments over the past several months and the Landlord did not serve an eviction notice for non-payment of rent until September 15, 2024.
- [30] Further, the evidence also establishes that after the Tenant would pay rent and request additional time to pay the remaining balance, the Representative would respond with "okay." Despite the Representative's intention behind the meaning of "ok" I find that it was reasonable for the Tenant to believe that she was permitted to pay the remaining balance of the rent later in the month.
- [31] I find that by accepting the late rent payments, with the response "ok" and not serving any earlier termination notices for non-payment of rent, the Representative acquiesced (condoned) in the late payment of rent.
- [32] In these circumstances, the Representative was required to first provide the Tenant with reasonable notice that the Tenant must strictly comply with the rent payment deadline of the first day of the month before serving an eviction notice for late payments. The legal term is called "equitable estoppel."
- [33] The evidence establishes that the Representative did not provide reasonable notice of strict compliance before serving the Notice. Therefore, I find that this basis for terminating the tenancy is invalid.
- [34] **It is now clear that the Landlord requires strict compliance with the tenancy agreement regarding rent payments. Therefore, the Tenant must ensure that rent is paid in full by the first day of the month.**

Significantly Interfered and/or Disturbed Others

- [35] The Representative stated that other tenants in the Residential Property have complained about the Tenant screaming in the Unit, and the Tenant's dogs defecating in the common area hallways. The Representative stated that police have visited the Unit on numerous occasions dating back to August of 2023.
- [36] The Tenant stated that she does not scream in the Unit. On one occasion she had a loud conversation with somebody but she was not screaming. The Tenant denied that her dogs defecate in the hallways.
- [37] The Tenant stated that this is the first time that she has been informed of these complaints and issues. The Tenant stated that in August of 2023 she was given an eviction notice because the police broke the Unit's front door during a wellness check. The Tenant stated that the Representative said she could stay if she repaired the door, which she did.
- [38] I find that the Landlord has not provided sufficient evidence to establish this reason for terminating the tenancy agreement.
- [39] The Notice is an older version and does not have a particulars of termination. This has limited the Tenant's ability to know the details of the allegations against her.
- [40] Further, when evicting for the reason of disturbing and/or significantly interfering others, the best practice is for a landlord to have the complaining tenants telephone in and participate in the hearing. The tenants would solemnly affirm to tell the truth, provide their testimony, and be available to answer questions regarding their evidence.
- [41] In this case, the Landlord has not provided any objective or direct evidence, or witness testimony to establish the allegations against the Tenant. Therefore, I find that this basis for terminating the tenancy is invalid. The tenancy agreement shall continue in full force and effect.

B. Must the Landlord secure the Residential Property?

- [42] The Tenant is requesting that the Landlord change the code for the Residential Property's locks.
- [43] The Tenant stated that other tenants have moved out of the Residential Property and new tenants have moved in. The Tenant stated that the Representative has ignored her request.
- [44] The Representative stated that he could change the code for the Residential Property's locks but he would need to hire a professional to do it. The Representative stated that the new tenants have the code and to change it would mean that every tenant in the Residential Property would need to be given the new code.
- [45] The Representative stated that the Residential Property is secure.
- [46] I find that the Tenant has not provided sufficient evidence to establish that the Residential Property, and the Unit are unsecure. The Landlord may choose to update and/or change the code for the Residential Property's locks, however, the Representative has provided reasonable justification for why the code lock has not been updated at the Tenant's request. This claim is denied.

CONCLUSION

- [47] The Application is allowed in part.
- [48] The Notice is invalid and the tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

- I. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 18th day of October, 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 **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.