

INTRODUCTION

- [1] The Landlord seeks an order requiring the Tenant and all occupants to vacate the Unit because the Tenant has sublet the Unit without the Landlord's consent.

DISPOSITION

- [2] The Landlord has not established its claim, and the Application is denied.

BACKGROUND

- [3] The parties entered into a written tenancy agreement for the Unit that commenced on May 1, 2019. A security deposit of \$500.00 was paid. Rent of \$908.00 is due on the first day of the month.
- [4] On October 15, 2024, the Landlord representative (the "Representative") posted a *Form 4 (A) Eviction Notice* to the Unit's door, with an effective date of November 15, 2024 (the "Notice") for subletting the Unit without the Landlord's consent. The Notice was also emailed to the Tenant and all known occupants.
- [5] I note that this effective date is automatically changed to November 30, 2024, under section 54 of the *Residential Tenancy Act* (the "Act") because the Landlord was required to provide the Tenant with a minimum of one full month's notice and serve the Notice the day before rent is due (clause 61(3)).
- [6] On December 1, 2024, the Representative filed a *Form 2 (B) Landlord Application to Determine Dispute* with the Residential Tenancy Office (the "Rental Office") seeking vacant possession of the Unit and for the Sheriff to put the Landlord in possession. The Landlord's claim for rent owed was removed from the Application because the Landlord was unsure who to claim against.
- [7] On December 6, 2024, the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 2, 2025.
- [8] On December 23, 2024, the Rental Office emailed the parties an evidence package. On December 27, 2024, the Rental Office emailed the parties a revised evidence package.
- [9] On January 2, 2025, the Representative participated in the teleconference hearing for the Landlord to determine the Application. The Representative confirmed receipt of the revised evidence package and that everything was included. The Tenant notified the Rental Office that he had vacated the Unit over a year ago and did not call into the hearing. I waited ten minutes, and the hearing proceeded in the Tenant's absence.

ISSUE

- A. Must the Tenant and all occupants vacate the Unit?

ANALYSIS

- [10] The Representative stated that around December 1, 2023, the Tenant notified the Landlord that he was moving out of the Unit, and another individual ("IS") was moving into the Unit. The Representative asked the Tenant and IS to complete the appropriate paperwork, but this did not occur. The Representative stated that the banking information for rent was updated to include both the Tenant's and IS's names. Because of the joint banking information, the Representative thought the Tenant had sublet the Unit to IS.

- [11] Around October 2024, the Representative learned that IS was no longer living in the Unit and had sublet the Unit to two other individuals (“LI” and “KN”). The Representative stated that IS was charging LI and KN more than the total rent. The Representative stated that he did not give permission for IS to sublet the Unit.
- [12] On October 15, 2024, the Representative posted the Notice to the Unit’s door and messaged a copy to the Tenant, IS, LI, and KN. The Tenant responded that he had vacated the Unit “long ago” and had turned the Unit over to IS. IS responded that he was subletting to LI and KN but denied charging them more than the rent. These messages were submitted as evidence.
- [13] On November 6, 2024, a Landlord employee sent a message to IS stating that he owed \$888.00 for November’s rent and \$131.00 in arrears. IS replied that he was no longer living at the Unit and to stop taking rent from his bank account. The Representative stated that the rent is still outstanding as of the date of the hearing. This message was submitted as evidence.
- [14] On December 1, 2024, the Landlord and KN entered into a new tenancy agreement for a different unit, and KN vacated the Unit.
- [15] On December 27, 2024, LI sent a message to the Landlord and the Rental Office stating that he had vacated the Unit and the Landlord could place his remaining items into storage.
- [16] On January 7, 2025, the Representative emailed the Rental Office and stated that he had confirmed that all occupants had vacated the Unit.
- [17] I find that the notice is invalid, and the Application is denied. The Landlord has not provided sufficient evidence to establish that specifically, the Tenant, the only person named on the Notice and the Application, has sublet the Unit without the Landlord’s consent.
- [18] The Representative stated that he became aware in December 2023 that the Tenant had moved out of the Unit and believed IS was subletting from the Tenant. However, the Representative did not serve the Notice until October 15, 2024, after he learned that IS was subletting to LI and KN.
- [19] If the Representative was concerned about the Tenant subletting the Unit to IS without the Landlord’s consent, the Representative should have served the Notice in December 2023. In this case, the Landlord waited approximately nine months to serve the Notice because IS began subletting the Unit.
- [20] Further, the Landlord accepted rent payments directly from IS, which indicates that there may be a tenancy agreement directly between the Landlord and IS.
- [21] However, I note that section 42 and clause 51(4) of the *Residential Tenancy Act* (the “Act”) state:
- (1) *Where a tenant has abandoned the rental unit, the landlord may enter and take possession of the rental unit.*
 - (2) *A tenant is considered to have abandoned a rental unit only where*
 - (a) *the tenant has vacated the rental unit;*
 - (b) *the tenancy agreement is not terminated in accordance with this Act or the tenancy agreement; and*
 - (c) *rent is overdue.*

(3) Not less than 24 hours before entering a rental unit for the purpose of taking possession under subsection (1), the landlord shall post a notice in a conspicuous place on the residential property stating

- (a) the landlord's belief that the tenant has abandoned the rental unit;*
- (b) the landlord's intention to enter the rental unit for the purpose of taking possession unless the tenant notifies the landlord, before the time set out in the notice, that the tenant has not abandoned the rental unit; and*
- (c) the day and hour when the landlord will enter the rental unit.*

(4) Where the tenant notifies the landlord under clause (3)(b) that the rental unit has not been abandoned, the landlord shall not enter the rental unit.

51(4) A landlord shall not regain possession of a rental unit unless

- (a) the tenant has vacated the rental unit or has abandoned the rental unit in accordance with section 42; or*
- (b) the Director has made an order directing the tenant to vacate the rental unit and the order has been sent to the sheriff for enforcement.*

[22] If the Landlord is satisfied that the Tenant has vacated or abandoned the Unit in accordance with section 42 of the Act, the Landlord may regain possession of the Unit.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid, and the Application is denied.

DATED at Charlottetown, Prince Edward Island, this 10th day of January, 2025.

(sgd.) Mitch King

Mitch King
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.