

INTRODUCTION

- [1] The Landlord seeks an order requiring the Tenants to vacate the Unit for non-payment of rent. The Landlord also seeks a monetary order for rent owing, in the adjusted amount of \$205.00.
- [2] The Tenants dispute the validity of the Landlord's claim and seek the continuation of the tenancy. The Tenants agree to owing the Landlord \$205.00.

DISPOSITION

- [3] I find that the Notice is invalid and the tenancy will continue in full force and effect.
- [4] The Tenants must pay the Landlord \$205.00 forthwith.

BACKGROUND

- [5] The Unit is a 2-bedroom and 1-bathroom rental unit in a 22-unit motel (the "Residential Property"). The Tenants lived in another rental unit on the Residential Property under a previous tenancy agreement.
- [6] On February 23, 2025 the parties entered into a new written, month-to-month tenancy agreement for the Unit. Rent of \$1,200.00 is due on the first day of the month. A \$1,200.00 security deposit was required.
- [7] The parties agreed that the security deposit and previous rent payment for the original rental unit would be transferred to the new tenancy and reflected on the Tenant's account.
- [8] On March 1, 2025 the Tenants moved into the Unit.
- [9] On March 10, 2025 the Landlord served the Tenants with a *Form 4(A) Eviction Notice* with an effective date of March 30, 2025 (the "Notice") for non-payment of rent in the amount of \$2,400.00.
- [10] On March 31, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking vacant possession of the Unit and for Sheriff Services to put the Landlord in possession. The Application also seeks rent owing, in the adjusted amount of \$205.00.
- [11] On April 4, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for April 15, 2025.
- [12] On April 10, 2025 the Rental Office emailed the parties a 29-page evidence package.
- [13] On April 15, 2025 the Landlord's representative (the "Representative"), the Landlord's witness, the Tenants and the Tenants' witness ("TW1") joined the teleconference hearing for determination of the Application. The Representative provided additional documentary evidence during the hearing, which was forwarded to the Tenants. The parties confirmed receipt of the evidence package and confirmed that all documents submitted to the Rental Office were included.

ISSUES

- A. Must the Tenants vacate the Unit due to the Notice?
- B. Must the Tenants pay the Landlord rent owing?

ANALYSIS & FINDINGS

A. Must the Tenants vacate the Unit due to the Notice?

Service of the Notice

- [14] The Tenants confirmed that they received the Application from the Landlord by email on March 31, 2025.
- [15] The Representative stated that the Notice was emailed to the Tenants through the Landlord's internal portal on March 10, 2025. A copy of the Notice was also posted to the Unit's front door on April 3, 2025.
- [16] The Tenants stated that they did not receive the Notice by email on March 10, 2025. The Tenants stated that the first time they saw the Notice was on April 3, 2025, when the Notice was posted to the door. The Tenants stated that the Landlord was required to serve the Notice by posting it to the Unit's door.
- [17] Subsection 100(1) of the *Residential Tenancy Act* (or the "Act") outlines the permitted methods of service, which states, in part:
- (1) *A document that is required or permitted under this Act to be given to or served on a person shall be **given or served in one of the following ways**:*
 - (a) *giving the document personally to the other party;*
 - ...
 - (d) *sending the document electronically where*
 - (i) *it is provided in the same or substantially the same form as the printed document,*
 - (ii) *the other party has provided an electronic address for receipt of documents, and*
 - (iii) *it is sent to that electronic address;*
 - ...
 - (f) *posting the document in a conspicuous place on the entrance of the rental unit.*

[Emphasis added.]

- [18] I do not agree with the Tenants' position that the Landlord was required to serve the Notice by posting it to the front door of the Unit. The Act requires a party to give or serve a document in *one* of the permitted methods under the Act.
- [19] After reviewing the Landlord's documentary evidence and the parties' testimony, I am satisfied that the Notice was served to the Tenants on March 10, 2025 in accordance with the Act.

Reason for Eviction: Non-payment of Rent

- [20] The Landlord's reason for terminating the tenancy is under subsection 60(1) of the Act, which states:
- (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.*
- [21] The Landlord's position is that the tenancy must end because of non-payment of rent.
- [22] The Representative stated that the Tenants did not pay the outstanding rental arrears within ten days of receiving the Notice.

[23] The Landlord submitted into evidence the Tenants' Statement with the following details:

Date	Description	Amount	Balance
2025-01-09	Previous balance		\$0.00
2025-02-24		\$1,200.00	\$1,200.00
2025-03-01	Rent	\$1,200.00	\$2,400.00
2025-03-21	Payment from prior unit being transferred to the correct unit	-\$995.00	\$1,405.00
2025-03-26	Transfer damage deposit from previous unit	-\$995.00	\$410.00
2025-03-31	Payment	-\$995.00	-\$585.00
2025-03-31	Payment	-\$410.00	-\$995.00
2025-04-01	Rent	\$1,200.00	\$205.00
Balance due			\$205.00

[24] On March 10, 2025 the Landlord served the Notice to the Tenants for non-payment of rent, in the amount of \$2,400.00. The Representative stated that from March 1 to April 15, 2025 the Tenants have owed rental arrears.

[25] In response to the Tenants' testimony and TW1's testimony, the Representative denied telling the Tenants that the Landlord rescinded the Notice.

[26] The Representative stated that in a conversation with the Tenants on April 3, 2025, he informed the Tenants that the Landlord was continuing with the eviction. The Representative stated that an eviction notice is only rescinded if the full amount of rental arrears is paid. The Representative stated that the Landlord decided on April 1, 2025 to proceed with the eviction because the Tenants still owed \$205.00 in arrears.

[27] The Representative stated that he did not accept the Tenants' \$205.00 payment on April 3, 2025 because he did not want the Tenants to interpret acceptance as a reinstatement of the tenancy agreement.

[28] The Tenants stated that after they moved into the Unit they believed that the money was transferred over from their previous tenancy agreement. The Tenants stated that Social Assistance pays their rent and there was miscommunication regarding the new rent amount, which is why \$995.00 was paid instead of \$1,200.00.

[29] The Tenants stated that on March 31, 2025, March's rent was paid in full and a portion of April's rent was paid. The Tenants stated the Representative told them on April 1, 2025 that the Notice was rescinded. The Tenants stated that March's rent was paid in full and the Landlord accepted the \$995.00 payment for April's rent.

[30] The Tenants stated that on April 3, 2025 they tried to pay the \$205.00 balance for April's rent but the Representative refused to accept the payment.

[31] TW1 stated that she was at the Unit and witnessed the two conversations (April 1 and 3, 2025) with the Tenants and the Representative. TW1 corroborated the Tenants' testimony about what the Representative told the Tenants in these two conversations.

[32] I have reviewed the parties' evidence. For the reasons below, I find that the Notice is invalid and the tenancy will continue in full force and effect.

[33] The evidence establishes that the Tenants moved from another rental unit on the Residential Property to the Unit. The parties entered into a new tenancy agreement and the parties agreed that the former security deposit and former rent payment would transfer to the new tenancy agreement.

- [34] However, on March 10, 2025 the Landlord served the Notice to the Tenants for non-payment of rent. The amount owed on the Notice was \$2,400.00. There were no particulars detailed on the Notice, however, the \$2,400.00 represented March's rent, in the amount of \$1,200.00 and the security deposit, in the amount of \$1,200.00.
- [35] I note that the Landlord did not select "you have not paid the security deposit" reason for termination in the Notice, which is a separate reason for terminating a tenancy under clause 61(1)(a) of the Act. This reason requires one full month's notice to vacate.
- [36] The funds transfer was not completed until March 26, 2025 at which time the Tenants only owed \$410.00 in arrears.
- [37] I find that the Notice is invalid because it did not accurately reflect the amount owed at the time the Notice was served. Subsection 60(1) of the Act uniquely provides a tenant the opportunity to invalidate an eviction notice by paying the full amount of arrears within ten-days of receiving an eviction notice. If the eviction notice does not have an accurate amount of the arrears owed, then a tenant may not have a fair opportunity to invalidate the eviction notice.
- [38] I note that subsection 53(d) of the Act states:

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

...

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

- [39] In these circumstances, I find that there was a significant difference in the amount owed on the Notice and what was actually owed (\$2,400.00 vs. \$410.00). Further, the evidence establishes that the Representative agreed that the funds from the previous tenancy was being transferred to the new tenancy.
- [40] If the Landlord would have waited until the transfer of funds was completed, and served the Notice on March 26, 2025, then the Tenants would have known the exact amount of rent outstanding. I note that the Tenants paid the outstanding balance for March's rent on March 31, 2025. This payment would have automatically invalidated an eviction notice under clause 60(4)(a) of the Act served on March 26, 2025.
- [41] Therefore, I find that the Notice is invalid and the tenancy will continue in full force and effect.
- [42] I also note that there is interest accruing on the Tenants' security deposit which should be reflected in the transfer of funds or returned to the Tenants, due to the end of the previous tenancy.

B. Must the Tenants pay the Landlord rent owing?

- [43] I find that the undisputed evidence establishes that the Tenants owe a \$205.00 balance for April's rent. The Tenants must pay the \$205.00 outstanding balance forthwith or the Landlord may serve another *Form 4(A) Eviction Notice* for non-payment of rent for April 2025.
- [44] The Application is allowed in part.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid and the tenancy will continue in full force and effect.
2. The Tenants must pay the Landlord \$205.00 forthwith.

DATED at Charlottetown, Prince Edward Island, this 16th day of April, 2025.

(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.