

**INTRODUCTION**

- [1] The Landlord seeks an order requiring the Tenant and all occupants to vacate the Unit for non-payment of rent.

**DISPOSITION**

- [2] I find that the Tenant and all occupants must vacate the Unit for non-payment of rent.

**BACKGROUND**

- [3] The Unit is a two-bedroom, one-bathroom apartment in a 35-unit building (the "Residential Property").
- [4] The former owner of the Residential Property, the Tenant and another tenant entered into a written, fixed-term tenancy agreement for the Unit from May 1, 2017 to April 30, 2018. At the end of the term the tenancy continued on a month-to-month basis. A \$413.50 security deposit was paid on April 28, 2017.
- [5] The other tenant moved out of the Unit in 2020 or 2021. The Tenant paid the other tenant their share of the security deposit.
- [6] On November 22, 2023 the Landlord purchased the Residential Property and the tenancy continued. Rent of \$927.86 is due on the first day of the month.
- [7] On February 11, 2025 the Landlord served the Tenant with a first *Form 4(A) Eviction Notice* with an effective date of March 3, 2025 (the "First Notice") for non-payment of rent in the amount of \$2,807.72.
- [8] On March 7, 2025 the Landlord served the Tenant with a second *Form 4(A) Eviction Notice* with an effective date of March 28, 2025 (the "Second Notice") for non-payment of rent in the amount of \$1,855.72.
- [9] The First Notice and the Second Notice are together referred to as the "Notices."
- [10] On March 26, 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 the Sheriff to put the Landlord in possession, which is the subject of this decision. The Application also seeks rent owing, which is the subject of Order LD25-155.
- [11] On April 1, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for April 17, 2025.
- [12] On April 14, 2025 the Rental Office emailed the parties a 49-page evidence package (the "Evidence Package").
- [13] On April 17, 2025 the Landlord's representative and the Tenant joined the teleconference hearing for determination of the Application. The parties confirmed receipt of the Evidence Package and confirmed that all documents submitted to the Rental Office were included. The parties provided additional documents after the hearing.

**ISSUE**

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

**ANALYSIS****Standard Form Eviction Notice**

- [14] The Tenant did not file an application with the Rental Office disputing the Notices.
- [15] Subsections 60(4) and (5) of the *Residential Tenancy Act* (or the “Act”) contain deeming provisions when a tenant does not file an application disputing a notice of termination served for non-payment of rent. These provisions state:
- (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.*
- (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.*
- [16] The British Columbia Court of Appeal<sup>1</sup> made the following comment regarding similar provisions of British Columbia’s residential rental legislation:
- “In my view, the Legislative Assembly has clearly and expressly stated that a tenant’s failure to respond within the statutory time limits to a notice given in accordance with either s. 46(4) or s. 47(4) will, by operation of law, bring a tenancy to an end and entitle the landlord to regain possession of the rental unit...”*
- [17] However, in this case I find that the deeming provisions do not apply.
- [18] The Notices are outdated versions of the Rental Office’s standard *Form 4(A) Eviction Notice*.
- [19] Unlike the current standard *Form 4(A) Eviction Notice*, the Notices do not state the procedure that the Tenant would need to follow to dispute the Notices. The standard wording only states: “*Tenants have ten (10) days to dispute this Eviction Notice.*”
- [20] In Order LR23-79 the Island Regulatory and Appeals Commission (the “Commission”) did not apply the deeming provisions regarding the outdated version of the *Form 4(A) Eviction Notice*. The Commission stated in part as follows:
- “Upon receiving the eviction notice from the Landlord, the Tenants did not file a section 75 application using a Form 2A to challenge the termination of the tenancy agreement. Subsection 61.(6) of the Act provides that unless a tenant disputes a notice of termination within 10 days of receipt, the tenant is deemed to accept the termination and must vacate.*
- The Director’s form for a notice of eviction is not clear in terms of how a Tenant goes about disputing a notice of eviction. The Tenants did not vacate and from that fact alone, together with the materials filed and evidence given, it is clear that the Tenants dispute the eviction. Further, the Director and the Commission have in the past considered the merits of the eviction upon considering an application for possession, where a Tenant challenges the validity of an eviction. Therefore, the Commission will look at the circumstances of the eviction to determine if sufficient grounds were present to justify an eviction.”*

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<sup>1</sup> *Ganitano v. Metro Vancouver Housing Corporation*, 2014 BCCA 10, at paragraph [44].

- [21] I will determine the Landlord's non-payment of rent claims on the merits because the Notices are based upon the outdated form, which is unclear regarding the dispute process.

**Non-Payment of Rent**

- [22] For the reasons below I find that the Second Notice is valid. Therefore, it is unnecessary for me to determine the First Notice.

- [23] The Landlord's reason for terminating the tenancy is under subsection 60(1) of the *Act*, which states:

*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.*

- [24] The evidence establishes that the Tenant owed \$1,855.72 in rent as of March 7, 2025, the date the Second Notice was served.

- [25] The Landlord did not receive any rent from the Tenant until April 16, 2025, being 40 days after the Second Notice was served. The Second Notice was not invalidated under clause 60(4)(a) of the *Act* because the Tenant did not pay the rent due within ten days of service.

- [26] I also note that, after the April 16, 2025 payment of \$1,855.72 was made for February and March 2025 rent, the Tenant still owed April 2025 rent in the amount of \$927.86 which should have been paid by April 1, 2025.

- [27] The evidence does not establish that the Second Notice was waived, the tenancy was reinstated or a new tenancy was created under section 74 of the *Act*.

- [28] The Tenant argued that he should not be evicted because the Landlord was not completing the pre-authorized withdrawals from the Tenant's bank account. I find that this is not a successful defence in this case.

- [29] The Landlord turned off the pre-authorized withdrawal arrangement after incurring non-sufficient funds charges on January 1, 2025. The Landlord's rent ledger shows numerous instances where the Tenant had non-sufficient funds in his bank account since January 2024.

- [30] The Landlord submitted into evidence records of emails and telephone calls to the Tenant from February 7, 2025 to March 19, 2025 requesting payment and providing payment options.

- [31] I find that, if the Tenant had the rent funds available, then by exercising due diligence the Tenant could have arranged for the payment of rental arrears to the Landlord within ten days of the Second Notice being served.

- [32] For these reasons, I find that the Second Notice is valid and the Application is allowed.

- [33] The Tenant and all occupants must vacate the Unit by the timeline below.

**IT IS THEREFORE ORDERED THAT**

1. The tenancy between the parties will terminate effective **5:00 p.m. on May 5, 2025.**
2. The Tenant and all occupants must vacate the Unit by this time and date.
3. 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 28th day of April, 2025.

(sgd.) Andrew Cudmore

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**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 **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.