

INTRODUCTION

- [1] This decision determines two applications filed with the Residential Tenancy Office (the "Rental Office") under the *Residential Tenancy Act* (the "Act").
- [2] The Landlord seeks an order requiring the Tenant and all occupants to vacate the Unit for non-payment of rent and repeatedly late rent payments. The Tenant filed an application seeking to remain in the Unit.

DISPOSITION

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

BACKGROUND

- [4] The Unit is a three-bedroom, two-bathroom single family home.
- [5] The Landlord and the Tenant entered into a written, fixed-term tenancy agreement from June 15, 2025 to December 14, 2026 (the "Tenancy Agreement"). A security deposit of \$2,100.00 was required and paid. Rent in the amount of \$2,100.00 is due on the fifteenth day of the month.
- [6] On August 28, 2025 after 5:00 p.m. the Landlord emailed the Tenant a *Form 4(A) Eviction Notice* with a vacate date of September 17, 2025 (the "Notice") for non-payment of rent in the amount of \$3,300.00 and repeatedly late rent payments.
- [7] The Notice is considered served effective August 29, 2025 under subsection 100(5) of the *Act* because it was served after 5:00 p.m. Therefore, the correct vacate date was September 18, 2025 to comply with the minimum notice period in subsection 60(1). This date is automatically corrected under section 54.
- [8] The particulars of termination state:
- "The tenant has failed to pay rent as required. As of the date of this nothice, rent in the amount of \$3,300.00 remains unpaid, which is more than one month's rent(\$2,100) in arrears.*
- This notice is issued pursuant to Part 4, Division 3, Section 60 of the Residential Tenancy Act due to non-payment of rent."*
- [9] On September 9, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office disputing the Notice, which is determined in this decision. The Tenant Application was emailed to the Rental Office after business hours on September 8, 2025, and is therefore considered to be filed on September 9, 2025.
- [10] On September 11, 2025 the Rental Office sent the parties notice of a teleconference hearing scheduled for the morning of September 23, 2025, along with a copy of the Tenant Application.
- [11] On September 15, 2025 the Rental Office sent the parties notice of a teleconference hearing rescheduled for the afternoon of September 23, 2025.
- [12] On September 16, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Rental Office seeking vacant possession of the Unit and for the Sheriff to put the Landlord in possession, which is determined in this decision. The Landlord Application also seeks rent owing, which is determined in Order LD25-361.
- [13] On September 19, 2025 the Rental Office emailed the parties a 228-page evidence package.

- [14] On September 23, 2025 the Tenant submitted three emails as additional evidence that were shared with the Landlord. The Landlord and the Tenant later joined the teleconference hearing. The Landlord confirmed receipt of the evidence package and confirmed that all evidence submitted to the Rental Office was included.
- [15] The parties provided additional evidence after the teleconference hearing. The Tenant confirmed that the Tenant did not believe any evidence was missing that had been submitted to the Rental Office before the teleconference hearing.

ISSUE

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

ANALYSIS

- [16] The parties provided conflicting evidence regarding the amount of the security deposit that was paid.
- [17] I find that the Tenant paid the Landlord the \$2,100.00 security deposit.
- [18] I find that the Tenant paid the security deposit through a \$1,000.00 payment on June 16, 2025 and part of the \$2,000.00 payment on July 15, 2025. This is consistent with the Tenant's evidence regarding the intent of the payments sent. This finding is also consistent with the correspondence submitted to the Rental Office. For instance, the evidence includes a document titled *Promise of Payment*. This document included a promise for the Tenant to pay rent in the amount of \$3,300.00 by September 1, 2025.
- [19] I also note that near the beginning of the tenancy the Landlord had a representative assisting with the rental and the Landlord was less involved compared to the Landlord's current involvement. The Landlord indicated that they were confused regarding the amount of the security deposit that was paid.
- [20] I find that the Tenant's evidence is more accurate. I find that the \$2,100.00 security deposit was in fact paid.
- [21] The Landlord's reason for terminating the tenancy in the Notice 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.*
- [22] The Notice was served effective August 29, 2025. The evidence establishes that the Tenant owed rent to the Landlord in the amount of \$3,300.00 on this date.
- [23] The rent owing was not paid within ten days of service. Therefore, the Notice was not invalidated under clause 60(4)(a) of the *Act*, which states:
- 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.*
- [24] On September 15, 2025 an additional rent payment of \$2,100.00 became due and the rent owing increased to \$5,400.00.
- [25] On September 19, 2025 the Tenant paid the Landlord \$2,100.00 and the rent owing amount returned to \$3,300.00.

- [26] As of the issuance of this decision on October 1, 2025, the amount of \$3,300.00 remains outstanding.
- [27] The evidence does not establish that the Notice was waived, the tenancy was reinstated or a new tenancy was created under section 74 of the *Act*.
- [28] As the Landlord has established a valid basis for ending the Tenancy Agreement for non-payment of rent, I will not consider the Landlord's second basis regarding repeatedly late rent payments.
- [29] For these reasons, I find that the Notice is valid. The Landlord Application is allowed and the Tenant Application is denied.
- [30] The Tenant and all occupants must vacate the Unit by the timeline below.
- [31] I also note that the Tenant Application was filed with the Rental Office on the eleventh day after the Notice was served.
- [32] The application was emailed to the Rental Office at 4:44 p.m. on September 8, 2025, after the Rental Office was closed. The Application was therefore filed as of September 9, 2025. The Tenant Application was required to be filed by the tenth day under clause 60(4)(b) of the *Act*.
- [33] This exemplifies the different rules for "filing" a document with the Rental Office versus "serving" a document electronically. As noted above, documents served electronically after 5:00 p.m. are considered served the next day that is not a holiday as provided in subsection 100(5).

IT IS THEREFORE ORDERED THAT

1. The tenancy between the parties will terminate effective **5:00 p.m. on October 8, 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 1st day of October, 2025.

(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 **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.