

## Introduction

- [1] On May 12, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking the following remedies pursuant to the Act:

*An order directing my tenant to pay outstanding rent; and*

*An order that my tenant vacate the rental unit and ordering the Sheriff to put me in possession of the rental unit.*

- [2] Attached to the Application was a Notice of Termination (Form 4) dated April 14, 2023, effective May 4, 2023, (the "Notice"). The Notice was served by the Landlord to the Tenant by leaving it in the Tenant's mailbox on April 14, 2023. The Notice was served for the following reasons:

*You have failed to pay your rent in the amount of \$1900.00, which was due on the 1<sup>st</sup> day of March, 2023 (s. 13 of Act); and*

*You have failed to give, within thirty days after entering into the rental agreement, the security deposit which was requested (s. 14(1)(c) of Act).*

- [3] On May 31, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant did not call into the hearing at the scheduled time of 9:30 am. The Tenant called the Rental Office after the hearing had concluded and he stated he thought the hearing was at 2:30 pm.

## Issues to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?
- ii. Does the Tenant owe the Landlord rent?

## Summary of the Evidence

- [4] On August 21, 2021, the Landlord and the Tenant entered into a written month-to-month rental agreement for the Residential Property, which consists of a three-bedroom two-bathroom house. Rent is \$1,900.00 per month due on the first day of the month. A security deposit of \$1,900.00 was required but only \$1,000.00 was paid.

## Landlord's Evidence and Submissions

- [5] The Landlord stated the Tenant owes rent in the amounts of \$900.00 for March 2023, \$1,900.00 for April 2023, and \$1,900.00 for May 2023, totaling \$4,700.00. Rent was initially \$2,600.00 per month but the Tenant started having financial difficulties. The Tenant and Landlord agreed to allow the Landlord to rent out the basement of the Residential Property for a reduction in rent to \$1,900.00 per month. The Tenant was still living in the Premises as of the day of the hearing. The Landlord stated the Tenant only paid \$1,000.00 of the \$1,900.00 which was required for the security deposit.

## Analysis

- [6] Subsection 60.1 of the Act 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.*

- [7] Subsections 60.4(a) and (b) of the Act state:

*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.*

- [8] Subsections 60.5(a) and (b) of the Act state:

*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.*

- [9] Subsection 61.1(a) of the Act states:

*A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*

- (a) the tenant does not pay the security deposit within 10 days of the date it is required to be paid under the tenancy agreement.*

- [10] Subsections 51.4(a) and (b) of the Act state:

*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.*

- [11] Subsection 85.(1)(b) the Act states:

*After hearing an application, the Director may make an order*

- (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord.*

- [12] Based on the undisputed evidence provided by the Landlord, the Officer finds that the Notice was properly served on the Tenant and the Tenant did not pay the outstanding rent within 10 days of receiving the Notice. The Tenant did not dispute the Notice by making an application to the Director within 10 days of receiving the Notice and is therefore deemed to have accepted that the tenancy ends on the effective date of the notice of termination.
- [13] Furthermore, the Officer finds that the tenant did not pay the full amount of the security deposit within 10 days of the date it was required to be paid under the tenancy agreement.
- [14] Therefore, the Officer finds that the Landlord has established a valid basis for terminating the tenancy agreement due to non-payment of rent and non-payment of the full amount of the security deposit. The Officer also finds that the Tenant owes \$4,700.00 in rent to the Landlord.

### Conclusion

- [15] The Notice is valid and the Application is allowed.
- [16] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on June 12, 2023, and the Tenant shall vacate the Residential Property by this time and date.
- [17] The Tenant shall pay the Landlord the outstanding rent in the amount of \$4,700.00 forthwith upon receipt of this Order.

### IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on June 12, 2023, and the Tenant shall vacate the Residential Property by this time and date.
- B. The Tenant shall pay the Landlord the outstanding rent in the amount of \$4,700.00 forthwith upon receipt of this Order.
- C. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

(sgd.) Mitchell King

Mitchell 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 **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.