

Introduction

- [1] On May 4, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Tenant Application") with the Residential Tenancy Office (the "Rental Office"). The Application is disputing a Notice of Termination pursuant to subsection 61.(5) of the *Act*.
- [2] Attached to the Application was a Notice of Termination by Lessor (Form 4) dated April 25, 2023, effective May 15, 2023, (the "Notice"). The Notice was served on the Tenant for the following reason:

You have failed to pay your rent in the amount of \$3870.00, which was due on the 1 day of April 2023.

- [3] On May 23, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking the following remedies pursuant to the *Act*.
- i. An order directing my tenant to pay outstanding rent (s.85(1)(b))*
 - ii. An order that my tenant vacate the rental unit and ordering the Sheriff to put me in possession of the rental unit (s.51(4)(b))*
- [4] On June 9, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant did not attend the hearing; the hearing was delayed ten minutes to accommodate any late arrival of the Tenant, the hearing subsequently continued with the Tenant's absence.

Preliminary Matter

- [5] The Tenant did not attend the hearing therefore the Tenant Application is abandoned and withdrawn.

Issue 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

- [6] The Landlord and the Tenant are parties to a tenancy agreement which commenced in or about September 2018. The Residential Rental is a three-bedroom detached single family home. Rent is \$1,290.00 monthly due on the first day of the month, and a security deposit of \$1,250.00 was paid.

Landlord's Evidence and Submissions

- [7] The Landlord's evidence is summarized as follows. The Landlord's representative, J.G., stated that rent for February thru May 2023 has not been paid (\$1,290.00 x 4) as well as now June rent. J.G. also stated that he received nothing after personally serving the Form 4A on the Tenant's door and has not received any rationale explaining the late rent.

Analysis

- [8] The relevant sections of the Act instruct,

Landlord's notice for non-payment of rent

60(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.

Tenant may dispute notice or pay unpaid rent

60(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.*

Tenant presumed to accept notice

60(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.*

Landlord's right to possession restricted

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

Powers of the Director

85(1)(b) After hearing an application, the Director may make an order directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord.

- [9] Based on the undisputed testimony, 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. Furthermore, the Tenant did not file a '*Section 75 Application*' with the Rental Office and is therefore deemed to have accepted the Notice. The Officer therefore finds that the Landlord has established a valid basis for terminating the rental agreement due to non-payment of rent and that the Tenant is therefore liable for such rent owed to the Landlord.

Conclusion

- [10] The Notice is valid and the Landlord Applications are allowed, notwithstanding a variance to the vacate date.
- [11] The rental agreement between the parties for the Premises shall terminate effective 11:59 p.m. on June 20, 2023. The Tenant shall vacate the Premises by this time and date.
- [12] The Tenant shall pay the Landlord the pro-rated outstanding rent in the amount of \$6,020.00 (\$5,160.00 March thru May Rent and \$860.00 pro-rated June Rent (to June 20th inclusive)) forthwith upon receipt of this Order.

IT IS THEREFORE ORDERED THAT

- A. The rental agreement between the parties for the Premises shall terminate effective 11:59 p.m. on June 20, 2023. The Tenant shall vacate the Premises by this time and date.
- B. The Tenant shall pay the Landlord \$6,020.00 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*.

DATED at Charlottetown, Prince Edward Island, this 16th day of June, 2023.

(sgd.) Jeremy Coffin

Jeremy Coffin
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.