

## Introduction

- [1] On June 15, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking the following remedies:

*To request an order directing my tenant to pay outstanding rent; and*

*To request my tenant vacate the rental unit and ordering the Sheriff to put me into possession of the rental unit.*

- [2] The Application is based on a termination notice (Form 4A) dated May 18, 2023, effective June 7, 2023, (the "Notice"). The Notice was served for the following reason:

*You have not paid your rent in the amount of \$740.00.*

- [3] On May 18, 2023, the Representative served the Notice on the Tenant by posting it on the door of the Residential Property.
- [4] The Landlord has acknowledged that the Tenant has vacated the Residential Property and is no longer seeking delivery of possession of the Residential Property.
- [5] On June 30, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Representative and a witness for the Representative participated.

## Issue to be Decided

- i. Must the Tenant pay rent to the Landlord?

## Summary of the Evidence

- [6] In February of 2016, the Landlord and Tenant entered into a verbal month-to-month rental agreement for the Residential Property. Rent was \$740.00 per month. A security deposit of \$680.00 was paid. The Tenant vacated the Residential Property between June 15<sup>th</sup> and June 18<sup>th</sup> of 2023.

### Landlord's Evidence and Submissions

- [7] The Representative is seeking an order directing the Tenant to pay rent for the months of May and June, for a total of \$1,480.00.
- [8] The Representative testified that in early May, 2023, he was contacted by Maritime Electric, notifying him that power had been disconnected to the Residential Property for non-payment. By that point the Representative had not received rent for the month of May. On May 18, 2023, the Representative served the Tenant with a Notice of termination for non-payment of rent.
- [9] The Representative testified that he sent numerous letters and made several phone calls to the Tenant to advise of the late rent payment and the Notice of termination, without success.
- [10] On June 16, 2023, the Representative served the Application on the Rental Office and posted the Application on the front door of the Residential Property. At that time, the Representative was informed by a neighbour that the Tenant had vacated the unit either earlier that day or the day before. The Representative further testified that the Tenant has not returned to the Residential Property since the Application was posted.

**Tenant's Evidence and Submissions**

- [11] The Tenant did not submit any evidence.

**Analysis**

- [12] The Landlord seeks an order directing payment of rent for the months of May and June, pursuant to sub-subsection 85(1)(b), which states:

**85. Powers of the Director**

- (1) *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;*

- [13] Based on the undisputed testimony and evidence presented by the Landlord, the Officer finds that the Tenant failed to pay the Landlord the \$1,480.00 owed in rent for the months of May and June.

- [14] However, the Officer finds that the Landlord failed to provide service of the Application to the Tenant, as required under subsection 76(2) of the Act, which states:

**76. Service**

- (2) *A person who makes an application to the Director shall give a copy of the application to the other party in accordance with section 100 within five days of making the application.*

- [15] Subsection 100(1) of the Act lists methods for service of documents under the Act as follows:

**100. Service of Documents**

- (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;*
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
  - (c) sending the document by registered mail or ordinary mail to the other party at an address provided by 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;*
  - (e) where the other party is a corporation, by giving a copy of the document personally to a director, manager or other officer of the corporation or by leaving it at, or sending it to, the registered office of the corporation by a method set out in clause (c) or (d);*
  - (f) posting the document in a conspicuous place on the entrance of the rental unit;*
  - (g) by any other means of service prescribed in the regulations.*

- [16] The Representative's testimony was that service of the Application was attempted by way of posting the document to the front door of the Residential Property. The Representative further testified that he was informed at the time that the Tenant had already vacated the Residential Property and that the Tenant did not return to the Residential Property.

- [17] The Officer finds that the Tenant was not provided with service of the Application. The Tenant must be given notice of the Application and an opportunity to be heard, pursuant to subsection 76(3) of the Act, which states:

**76. Failure to effect service**

- (3) *If, at any time, the Director is of the opinion that a party has not been provided notice in accordance with section 100, the Director may order that the party be given notice and an opportunity to be heard.*

**Conclusion**

- [18] The Application is denied.

**IT IS THEREFORE ORDERED THAT**

- A. The Application is denied.

**DATED** at Charlottetown, Prince Edward Island, this 4th day of July, 2023.

(sgd.) Colin Trewin

Colin Trewin  
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.