

## Introduction

- [1] On July 3, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord is seeking the following remedies pursuant to the *Act*:

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

*To request an earlier termination of the tenancy agreement;*

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

*Other: "Use the property for business purpose without allow"*

- [2] The Officer notes that the fourth "remedy" listed by the Landlord is not a remedy which the Officer may award under the *Act* and will not be considered.
- [3] Attached to the Application was an Eviction Notice (Form 4A) dated June 11, 2023, effective June 21, 2023 (the "Notice"). The Representative testified that on June 21, 2023, the Landlord served the Notice on the Tenants by posting it to the Tenants' door. The Notice was served on the Tenants for the following reasons

*You have not paid your rent in the amount of \$1,700; and*

*You are repeatedly late in paying rent.*

- [4] On July 17, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Representative for the Landlord participated in the hearing. The Tenants did not participate in the hearing.

## Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?
- ii. Must the Tenants pay rent to the Landlord?
- iii. Is an earlier termination of the rental agreement warranted?

## Summary of the Evidence

- [5] On August 1, 2023, the Landlord and the Tenants entered into a written fixed-term rental agreement for the Residential Property. The Residential Property is a townhouse. Rent is \$1,700.00 per month due on the first day of the month. A security deposit of \$1,700.00 was required and paid.

## Landlord's Evidence and Submissions

- [6] The Representative testified that the Tenants have repeatedly been late in paying rent. The Representative testified that only \$850.00 has been paid toward rent for the month of June and no rent has been paid toward rent for the month of July, resulting in the Landlord claiming rent owing of \$2,550.00. The Representative testified that she is not aware of any plans from the Tenants to move out, and thus requires an order to take possession of the Residential Property.
- [7] The Officer became aware after the hearing of additional evidence submitted on Sunday, July 16, 2023, by the Landlord. The Officer did not admit this evidence as it was past the parties' evidence submission deadline. The Officer notes that the Tenant was not disclosed this additional evidence and, although relevant, the accept the additional evidence would be prejudicial to the Tenants.

**Tenants' Evidence and Submissions**

[8] The Tenants did not submit any evidence.

**Analysis**

[9] 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 notice for cause***

61.(1) A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(b) The tenant is repeatedly late in paying rent.

***Landlord's right to possession restricted***

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

(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.

***Powers of the Director***

85.(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.

***Landlord may request earlier termination date***

61.(7) Despite subsection (3), a landlord who wishes to give notice of termination under subsection (1) may make an application to the Director to request an order

- (a) ending a tenancy on a date that is earlier than the tenancy would end if the notice of termination were given under subsection (1); and
- (b) granting the landlord an order of possession in respect of the rental unit.

**Requirements for earlier period of notice**

61.(8) The Director shall grant an application under subsection (7) only if the Director is satisfied that

- (a) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,
  - (iii) put the landlord's property at significant risk,
  - (iv) engaged in illegal activity that
    - (A) has caused or is likely to cause damage to the landlord's property,
    - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
    - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord,
  - (v) caused unreasonable damage to the residential property, or
  - (vi) frustrated the tenancy agreement; and
- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice of termination under subsection (1) to take effect.

- [10] Based on the undisputed evidence, the Officer finds that the Notice was properly served on the Tenants and the Tenants did not pay the outstanding rent within 10-days of receiving the Notice. Furthermore, the Tenants did not file a 'Section 75 Application' (Form 2A) with the Rental Office and is therefore deemed to have accepted the Notice, pursuant to subsection 60.(5) of the Act. The Officer therefore finds that the Landlord has established a valid basis for terminating the rental agreement due to non-payment of rent. The Officer also finds that the Tenants owe \$2,550.00 in rent to the Landlord.
- [11] With regards to the Landlord's request for earlier termination of the rental agreement, the Officer notes that the requirements listed under subsection 61.(8) of the Act are not satisfied. The Officer notes that there was no evidence presented showing a threat of harm to the Landlord and/or other tenants, or of damage to the Residential Property. Therefore, the Officer finds that earlier termination of the rental agreement is not warranted in this matter.
- [12] The Officer finds based on the evidence that the Notice is valid and the Application is allowed in part.
- [13] The Officer reminds the Landlord that if the Landlord wants to make a claim against the security deposit based on any damage to the Residential Property, she must apply within 15 days from when the Tenants vacate the unit.

**Conclusion**

- [14] The Notice is valid and the Application is allowed in part.
- [15] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on July 31, 2023, and the Tenants shall vacate the Residential Property by this time and date.

- [16] The Tenants shall pay the Landlord the outstanding rent in the amount of \$2,550.00 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 July 31, 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 \$2,550.00 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 18th day of July, 2023.

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(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 **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.