

## Introduction

- [1] On May 1, 2023 the Landlord filed an application (Form 2B) with the Residential Tenancy Office (the "Rental Office"), pursuant to sub-subsection 85.(1)(b) of the *Act*, seeking the following remedy:

*To request an order directing my tenant to pay outstanding rent (the "Application").*

- [2] The Application is requesting the Tenants pay \$2,200.00 in outstanding rent to the Landlord.
- [3] The Application was filed under the new *Act* – the *Residential Tenancy Act*. The Tenants filed two applications under the former *Act* – the *Rental of Residential Tenancy Act*. Both matters were heard together and the Tenants' application will be decided in Order LD23-329.
- [4] On June 29, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants participated and two representatives of the Landlord participated.

## Issue to be Decided

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

## Summary of the Evidence

- [5] Approximately eight or nine years ago the Landlord and the Tenants entered into a verbal month-to-month tenancy agreement for the Residential Property. Rent was \$730.00 due on the first day of the month. No security deposit was required.

### Landlord's Evidence and Submissions

- [6] The representatives stated that on March 1, 2023 one of the representatives went to the Residential Property to collect rent. The Tenants opened the door and stated "that they would not be paying rent and that they would be contacting IRAC." The representative stated that the Tenants did not pay rent due to an eviction notice he served them on February 28, 2023. The representative stated that the Tenants did not pay rent for March 2023, April 2023 and May 2023. The representatives stated that both the Tenants vacated the Premises by May 7, 2023.

### Tenant's Evidence and Submissions

- [7] The Tenants did not dispute the representative's testimony regarding not paying rent. The Tenants stated that there were numerous issues with the Residential Property, they were being evicted, and that is why they withheld rent. The Tenants stated that one of them moved out in March 2023 and the other tenant vacated on May 7, 2023.

## Analysis

- [8] The Officer notes that the Landlord is seeking an order directing payment of rent for the months of March 2023, April 2023 and May 2023, pursuant to sub-subsection 85.(1)(b) of the *Act*, 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;*

[9] Further, the Officer notes that section 19.(1) of the *Act* states:

**19. Tenant shall pay rent when due**

(1) *A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or portion of the rent.*

[10] Based on the testimony of the parties and the evidence provided the Officer finds that the Tenants withheld rent for the months of March 2023, April 2023 and May 2023. The Officer finds that pursuant to sub-subsection 19.(1) of the *Act* the Tenants did not have the right to withhold rent. Further, the Officer finds that the reasons testified by the Tenants for withholding the rent are not part of the *expressed rights* contemplated under the *Act*. Therefore, the Officer finds that the Application is allowed. The Tenants shall pay the Landlord \$1,628.00 forthwith.

[11] The Officer's calculations are as follows:

March 2023 rent: \$730.00 outstanding;  
April 2023 rent: \$730.00 outstanding;  
7 days in May 2023: \$24.00 per day multiplied 7 = \$168.00.  
\$730.00 multiplied by 2 is \$1,460.00 + \$168.00 = \$1,628.00.

**Conclusion**

[12] The Application is allowed.

[13] The Tenants shall pay the Landlord \$1,628.00 forthwith.

**IT IS THEREFORE ORDERED THAT**

A. The Tenants shall pay the Landlord \$1,628.00 forthwith.

**DATED** at Charlottetown, Prince Edward Island, this 18th day of July, 2023.

(sgd.) Cody Burke  
Cody Burke  
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.