

Introduction

- [1] On June 9, 2023, the Tenants filed a Tenants' Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is disputing an Eviction Notice pursuant to subsection 61(5) of the *Act* (Docket 23-449).
- [2] Attached to the Application was an Eviction Notice (Form 4A) dated June 7, 2023, effective August 7, 2023 (the "Notice"). The Notice was served on the Tenants for the following reasons:
- You have not paid your rent in the amount of \$16,500.00; and
You are repeatedly late in paying rent.*
- [3] On June 9, 2023, the Tenants also filed an Application, pursuant to subsection 29(8) of the *Act*, seeking reimbursement for emergency repairs that were personally paid (Docket 23-450).
- [4] On July 13, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenants and the Landlords, by way of a property management representative, participated.

Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?
- ii. Are the Tenants entitled to a reimbursement for alleged repairs made to the residential property?

Summary of the Evidence

- [5] In or about April 2015, the Tenants and the Landlords entered rental arrangement for the Residential Property. The Residential Property consists of a two-bedroom four season cottage/detached dwelling. Rent is currently \$1,200.00 per month and no security deposit was paid.

Landlords' Evidence and Submissions

- [6] The Landlords' evidence is summarized as follows. The Landlords representative, C.M., stated that there is currently \$17,700.00 of rental arrears – which includes no payment of the last 13 months rent. C.M testified that there have been consistent delays in rent payments for the last several years plus a buildup of rent shortfalls and unpaid rent. C.M also stated that the Landlords want the Tenants evicted because of the size of the arrears and that the Landlords are losing money as they are still paying for all of the services – electrical, water/sewer, property taxes etc – but not collecting rent.
- [7] In reply to the R.P.'s oral evidence, C.M. disputed parts of R.P.'s testimony, questioning how he was allegedly 45 days without power when the electric bill shows no significant reduction in consumption. C.M. also stated that at no point has the landlord been made aware of the issues despite that the Landlord being in contact with the Tenants about the unpaid rent and that the Tenants were also to the Landlord's personal residence for rent payments. C.M provided the example of a Text correspondence, amongst several others, between the parties on July 18, 2022, mere days before the roof replacement which was completed without the Landlord's approval or knowledge.

- [8] The Rental Officer queried C.M. on why the Landlords waited for the alleged unpaid rent to reach this size and C.M. replied that the Landlords are both very busy people and it just fell through the cracks accumulating over time.

Tenants' Evidence and Submissions

- [9] The Tenants' evidence is summarized as follows. The Tenant, R.P., stated that the property management company is not a valid company and therefore the Notice and its service is invalid. R.P. also stated that when he moved into the property he knew that the roof was old but did not realize the how many other issues were wrong with the premises. R.P. testified that within the past year the living conditions at the cottage have been really bad, specifically: extended periods of no power (45 days post hurricane Fiona), inoperable fridge and stove, leaking roof (before replacement), weak water pressure, and yard debris. R.P. described the condition as "inhabitable" and not worth the rent.
- [10] R.P. stated that he replaced the roof because it was leaking and in terrible condition. R.P. also stated that he paid \$4,000.00 cash for the roof repair.
- [11] R.P. further testified the Landlords nor their property manager made any effort to work out the unpaid rent; when he attempted to negotiate, he was served with the eviction notice.
- [12] The Rental Officer queried R.P. on whether the Tenants ever advised the Landlords of the issues or their concerns, and R.P. replied that he texted the Landlord to "call him" but gave the Landlord no formal correspondence or specific complaints.

Analysis

Issue #1: Notice for Non Payment of Rent

- [13] The relevant sections of the Act instructs,

Landlord's notice for non-payment of rent

60(1) A Landlords 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 Tenants receives the notice.

Tenants may dispute notice or pay unpaid rent

60(4) Within 10 days after receiving a notice of termination under this section, the Tenants 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.*

Tenants presumed to accept notice

60(5) Where a Tenants 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 Tenants

- (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 Landlords shall not regain possession of a rental unit unless the Director has made an order directing the Tenants to vacate the rental unit and the order has been sent to the sheriff for enforcement.

- [14] The Tenants were unable to provide any evidence of rent payment, and conversely, the Landlords provided the outstanding rental roll logs and followups with the Tenants. Therefore, the Officer finds that the Notice was served on the Tenants for a valid reason 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' with the Rental Office and is therefore deemed to have accepted the Notice. The Officer therefore finds that the Landlords have established a valid basis for terminating the rental agreement due to non-payment of outstanding rent (\$17,700.00 at the time of the hearing) and that the Tenants are therefore liable for such rent owed to the Landlords.
- [15] The Rental Officer also finds no issue with the Notice or the service thereof based on the corporate standing of the property management company. The Rental Officer notes that at this time there is no rent owing application being heard, and therefore cannot make any order with respect to the payment of unpaid rent.

Issue #2: Reimbursement for repairs

- [16] The relevant sections of the Act instructs,

Emergency repairs

29(1) In this section, "emergency repairs" means repairs that are

- (a) urgently required;*
- (b) necessary for the health or safety of anyone or for the preservation or use of a residential property; and*
- (c) made for the purpose of repairing*
 - (i) leaks in pipes or the roof,*
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,*
 - (iii) the heating system,*
 - (iv) damaged or defective stairs and entrances,*
 - (v) damaged or defective locks or devices that give access to a rental unit,*
 - (vi) the electrical system, or*
 - (vii) in prescribed circumstances, a rental unit or residential property.*

Tenant may have emergency repairs made

29(4) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;*
- (b) the tenant has made reasonable attempts to provide notice of the need for emergency repairs to the contact person referred to in subsection (3);*
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs. [emphasis added]*

Landlord shall reimburse tenant

29(6) A landlord shall reimburse a tenant within seven days for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord in writing; and*
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.*

Non-application of subsection (6)

29(7) Subsection (6) does not apply to amounts claimed by a tenant for repairs about which the Director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (4) were met;*
- (b) the tenant has not provided the account and receipts for the repairs as required under clause (6)(b);*
- (c) the amounts represent more than a reasonable cost for the repairs;*
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

- [17] The Rental Officer acknowledges that based on the evidence of the Tenants, the condition of the cottage's roof would have likely met the definition of requiring emergency repairs (per s29(1)). Despite this fact, the Tenant failed to notify the Landlord of the need for emergency repairs – including in a text conversation held in the days before the repairs were carried out. This failure or oversight by the Tenant contravenes the explicit notice requirement (condition precedent) as set out in section 29(4) of the *Act*. Moreover, section 29(7)(a) of the *Act* absolves the Landlord of any obligation to reimburse the Tenant for the cost of the roof repairs because of the Tenants' failure to advise the Landlord of the said repair requirement.
- [18] The Rental Officer also notes that at no time the Tenant made any application to the Rental Office seeking repairs or any nature be carried out.

Conclusion

- [19] The Notice is valid and the Applications are denied.
- [20] The rental agreement between the parties for the Premises shall terminate effective 11:59 p.m. on August 28, 2023, and the Tenants are liable for rent up to and including this date.

IT IS THEREFORE ORDERED THAT

- A. The rental agreement between the parties for the Premises shall terminate effective 11:59 p.m. on August 28, 2023. The Tenants shall vacate the Premises by this time and date.
- B. 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 20th day of July, 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.