

## Introduction

- [1] On July 4, 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; and*

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

- [2] Attached to the Application was an Eviction Notice (Form 4A) dated June 6, 2023, effective June 26, 2023 (the "Notice"). The Notice was served on the Tenant for the following reasons

*You have not paid your rent in the amount of \$1,110.50.*

- [3] On June 6, 2023, the Landlord served the Notice on the Tenant by email through the property management interactive portal. The portal sends an email, including an attachment of the Notice itself, to the email of the Tenant.
- [4] On July 4, 2023, the Application was served on the Tenant by email through the portal.
- [5] On July 20, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Representative for the Landlord participated in the hearing. The Tenant did not participate in the hearing.

## Issue to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?
- ii. Must the Tenant pay rent to the Landlord?

## Summary of the Evidence

- [6] The Landlord and the Tenant are in a week-to-week verbal tenancy agreement for a unit in a motel. The Representative could not speak to how long the Tenant has occupied the Residential Property as the Representative's property management company only began management of the Landlord's property in January of 2023. Rent is \$350.00 per week due on every Friday. A security deposit of \$200.00 was required and paid.

### Landlord's Evidence and Submissions

- [7] The Representative testified that the Tenant has repeatedly been late in paying rent. The Representative testified that the most recent time the Tenant's balance of rent owing was zero was April 27, 2023. Since then, the Tenant has inconsistently made payments, including partial payments. The Landlord testified that this has resulted in \$2,273.50 in rent owing as of July 21, 2023. This total amount includes \$3.50 as a 1% late fee accrued on one of the weeks of unpaid rent, and a \$25 administrative fee for a failed withdrawal from a financial institution for insufficient funds.
- [8] The Representative testified that she believes that the Tenant continues to occupy the Residential Property, and thus requires an order to take possession of the Residential Property.
- [9] The Representative further submitted that the Landlord should be awarded prorated rent owing into the future to account for days up until the ordered termination date.

**Tenant's Evidence and Submissions**

[10] The Tenant did not submit any evidence.

**Analysis**

[11] 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.*

[12] The Officer notes that he is unable to order \$3.50 for the Landlord's 1% late fee. What fees may be charged by a Landlord are set under subsections 20(1) and (2) of the Act, which state:

**Prohibited fees during tenancy**

(1) *A landlord shall not charge*

- (a) *a guest fee, whether or not the guest stays overnight;*
- (b) *a fee for replacement keys or other access devices if the replacement is required because the landlord changed the locks or other means of access;*
- (c) *a fee in relation to any cost incurred by the landlord to repay a security deposit; or*
- (d) *a fee for a service prescribed in the regulations.*

**Fees charged by landlord**

(2) *A landlord may charge a fee for*

- (a) *the actual cost of replacing keys or other access devices;*
- (b) *the actual cost of additional keys or other access devices requested by the tenant;*
- (c) *a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;*
- (d) *an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution;*
- (e) *a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement; and*
- (f) *a service prescribed in the regulations.*

- [13] The Officer finds that fees for late rent are not a permitted fee under the *Act*. As such, the Officer does not include the \$3.50 late fee in the Landlord's claim for rent owing.
- [14] Based on the undisputed evidence, 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*' (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 tenancy agreement due to non-payment of rent. The Officer also finds that the Tenant owes \$2,270.00 in rent to the Landlord.
- [15] The Officer finds based on the evidence that the Notice is valid and the Application is allowed in part.
- [16] The Officer is unable to make an order for prorated future rent owing as of the ordered termination date as the actual vacate date of the Tenant cannot be guaranteed. The Officer reminds the Representative that if the Landlord wants to make a claim for any remaining rent left outstanding or make a claim against the security deposit, she must make further applications.

**Conclusion**

- [17] The Notice is valid and the Application is allowed.
- [18] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on July 28, 2023, and the Tenant shall vacate the Residential Property by this time and date.
- [19] The Tenant shall pay the Landlord the outstanding rent in the amount of \$2,270.00 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 28, 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 \$2,270.00 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 25th 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.