

Introduction

- [1] On July 5, 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 order the Sheriff to put me in possession of the rental unit.

- [2] Attached to the Application was an Eviction Notice (Form 4) dated June 3, 2023, effective June 23, 2023 (the "Notice"). The Notice was served on the Tenant for the following reasons

You have failed to pay your rent in the amount of \$1,200.00, which was due on the 1 day of June, 2023.

- [3] On June 3, 2023, the Landlord served the Notice on the Tenant by posting it to the Tenant's door. On July 5, 2023, the Landlord served the Application on the Tenant by posting it to the Tenant's door.

- [4] On July 25, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and the Tenant participated 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

- [5] The Landlord and the Tenant entered a written one-year fixed-term tenancy agreement about two and a half years ago. The tenancy agreement has since converted to a month-to-month agreement. The Residential Property is a single detached house. Rent is \$1,200.00 per month, due on the first of each month. A security deposit of \$1,200.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord testified that the Tenant failed to pay rent for June and July, and is seeking \$2,400.00 for the rent owing for those months. The Landlord testified that the Tenant has previously been late paying rent multiple times before.
- [7] The Landlord testified that the Tenant requested arrangements to make payments on later dates, however the Landlord refused based on prior failures to pay on time. The Landlord denied any agreement to allow the Tenant to pay rent at a later date.

Tenant's Evidence and Submissions

- [8] The Tenant acknowledged failing to pay rent for the months of June and July. The Tenant testified that he had money to pay rent, but it was stolen. He further testified that he later accumulated more money to pay the rent, but ended up losing it gambling.
- [9] The Tenant testified that he had made an earlier agreement over the phone with the Landlord to pay for half the rent owing on the first of July, and to pay the rest later. The Tenant acknowledged that he did not pay half on the first of July as previously agreed.

Preliminary Matter

[10] The Officer notes that the Landlord served the Tenant with the previous Form 4 Notice applicable under the *Rental of Residential Property Act*, rather than the new Form 4A Eviction Notice applicable under the new Act. Is the Form 4 Notice used in the eviction process valid?

[11] The Officer notes the application of section 30 of the *Interpretation Act*, RSPEI 1988, c I-8 ("*Interpretation Act*") which states:

Effect of deviation from specified form

Where an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if

- (a) the deviations do not affect the substance;*
- (b) the deviations are not likely to mislead; and*
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.*

[12] The Officer notes that the relevant section on the current Form 4A is clause (a), which states:

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

[13] Clause (a) of the current Form 4A is pursuant to subsection 60.(1) of the *Act*, which states:

Landlord's notice for non-payment of rent

- (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.*

[14] The Officer finds that while the Landlord did not use the proper notice, the application of the *Interpretation Act* allows the Notice to be proceed under clause (a) of the current Form 4A. The Officer finds that the Tenant was not prejudiced by the use of the previous notice. The Officer finds that the Tenant was aware of the reason for the Notice of termination and was given the opportunity to make full answer and defence.

[15] The Officer reminds the Landlord to use the new forms under the current legislation for future notices and applications.

Analysis

[16] 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.

[17] Based on the totality of the 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 rental agreement due to non-payment of rent for a two month period. The Officer further finds that the Tenant owes \$2,400.00 in rent to the Landlord.

[18] The Officer finds based on the evidence that the Notice is valid and the Application is allowed.

Conclusion

[19] The Notice is valid and the Application is allowed.

[20] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on August 3, 2023, and the Tenant shall vacate the Residential Property by this time and date.

[21] The Tenant shall pay the Landlord the outstanding rent for the months of June and July in the amount of \$2,400.00 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 August 3, 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 \$2,400.00 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 27th 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 **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.