

## Introduction

- [1] On May 8, 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 remedy pursuant to the *Act*:

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

- [2] On May 8, 2023, the Landlord served the Notice on the Tenants by email.
- [3] On August 8, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Representative for the Landlord and one of the Tenants participated.

## Issue to be Decided

- i. Do the Tenants owe the Landlord rent?

## Summary of the Evidence

- [4] On August 1, 2022, the Landlord and Tenants entered into a written month-to-month tenancy agreement for the Residential Property. The Residential Property consists of a detached mobile home. Rent was \$850.00 per month due on the first day of the month. A security deposit of \$850.00 was required and paid. The Tenants vacated the Residential Property on April 30, 2023.

### Landlord's Evidence and Submissions

- [5] The Representative testified that he was informed by the Tenant on April 5, 2023 that payment for the month of April would be delayed due to banking issues. The Representative testified that the Tenants informed him via text message on April 14, 2023 that they intended to vacate the Residential Property on April 30, 2023, and that the security deposit could be kept for April's rent.
- [6] The Representative testified that he advised the Tenant that that this was insufficient notice, and that he is entitled to rent payments for the months of April and May.
- [7] The Representative testified that one of the Tenants approached him about doing repairs to the Residential Property and being reimbursed for the costs. The Representative testified that he reimbursed the Tenant for some costs and provided other materials. The Representative testified that if the repairs made were performed to an unsatisfactory condition, that was not his fault.
- [8] The Representative disagreed that a neighbour disturbed the Tenant's quiet enjoyment. The Representative testified that the Tenant was the only tenant who made complaints about the neighbour's behaviour.

### Tenants' Evidence and Submissions

- [9] The Tenant testified that she should not be required to pay rent for the months of April and May due to the conditions of the Residential Property. The Tenant testified that there were numerous issues with the Residential Property, including insufficient electricity capacity, a broken heat pump, a week during the winter without water, damaged windows, a damaged deck, rotting floors, and a rotting wall, among other complaints.

- [10] The Tenant further testified that the Landlord failed to respond to a neighbour who was making excessive noise and harassing her. The Tenant testified that she confronted a neighbour about noise levels which led to various aggressive interactions. The Tenant testified that the neighbour threatened the other Tenant and intimidated them. The Tenant testified that the Landlord was informed of the neighbour's behaviour, but no action was taken.

## Analysis

- [11] The Officer notes the application of the following sections of the Act:

### **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 a portion of the rent.*

### **40. Retention by landlord, other circumstances**

- (3) *A landlord may retain an amount from a security deposit if*

- (b) *after the end of the tenancy, the Director orders that the landlord may retain the amount.*

### **55. Notice for monthly or other periodic tenancy**

- (2) *A tenant may end a month-to-month or other periodic tenancy by giving the landlord a notice of termination effective on a date that*
- (b) *is not earlier than one month after the date the landlord receives the notice; and*
- (c) *is the day before the day that rent is payable under the tenancy agreement.*

### **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.*
- (j) *determining the disposition of a security deposit, including*
- (i) *authorizing a tenant to offset, in the manner specified in the order, money a landlord owes to the tenant against money the tenant owes to the landlord, and*
- (ii) *authorizing a landlord to offset, in the manner specified in the order, money a tenant owes to the landlord against money the landlord owes to the tenant, other than a security deposit where the landlord has not made an application under clause 40(1)(b);*

- [1] Pursuant to subsection 55.(2) of the Act, the Tenants' notice of termination on April 14, 2023 was only valid to end the tenancy agreement as of May 31, 2023. This caused rent to be incurred for the month of May, in addition to April's rent which remained owing. The Tenants therefore owe \$1,700.00 in rent.
- [2] Based on sub-subsection 40.(3)(b) of the Act, the Landlord shall retain the security deposit, in the amount of \$850.00, in satisfaction of rent owing from the month of April. The Officer finds that the outstanding rent the Tenant owes the Landlord is \$850.00 for rent owing for the month of May.

- [3] The Officer notes that tenants are not permitted to withhold rent due to unsatisfactory conditions, pursuant to subsection 19.(1) of the *Act*. The Tenants could have filed Form 2A applications to seek orders for repairs of the Residential Property, or for compensation for its conditions. Tenants are not permitted to unilaterally withhold rent owed under a tenancy agreement.

### Conclusion

- [4] The Application is allowed.
- [5] The Landlord shall retain the Tenant's security deposit in satisfaction of rent owing for the month of April, in the amount of \$850.00.
- [6] The Tenant shall pay the Landlord the outstanding rent for the month of May in the amount of \$850.00 on or before September 11, 2023.

### IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the Tenant's security deposit in satisfaction of rent owing for the month of April, in the amount of \$850.00.
- B. The Tenant shall pay the Landlord the outstanding rent for the month of May in the amount of \$850.00 on or before September 11, 2023.
- 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 11th day of August, 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 **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.