

Introduction

- [1] On July 21, 2023, the Landlords filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking:

To request an order directing my tenant pay outstanding rent.

- [2] On August 11, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). One of the Tenants and a Landlord Representative participated.

Issue to be Decided

- i. Do the Tenants owe the Landlords rent?

Summary of the Evidence

- [3] In April of 2015 the Tenants and the Landlords entered into a verbal month-to-month tenancy agreement for the Residential Property. The Residential Property is situated in a single-family house. Rent is \$1,200.00 per month due on the first day of the month. A security deposit was not required.

Landlords' Evidence and Submissions

- [4] The Representative stated the Tenants owe the Landlords \$18,900.00 in outstanding rent as of August 2023. She stated the Tenants have not paid rent in the past 15 months ($\$1,200.00 \times 15 = \$18,000.00$) and the last payment from the Tenants prior to that was short \$900.00. The Representative stated the Landlords' former property manager retired and the Representative was hired sometime later. It was then noticed that the Tenants had not been paying their rent.
- [5] The Representative stated a previous Order from the Director from June 2023 found that the Tenants failed to pay rent and they have been ordered to vacate the Residential Property by August 28, 2023. A request for rent owing was not a part of the hearing at that time.
- [6] The Representative testified the Tenants submitted that the Landlords did not serve the Tenants the Application within five days of making the Application with the Rental Office. She stated the Application was filed with the Rental Office on July 21, 2023, and the Application was served on the Tenants by the Representative on July 26, 2023. B.M. testified he was with the Representative on July 26, 2023, when the Application was served on the Tenants.
- [7] The Representative stated she has been given permission by the Landlords to represent the Landlords as a property manager. She testified that the Tenants have submitted the Landlords are absentee Landlords and will not repair the Residential Property. The Representative stated the Tenants have only recently notified the Landlords about issues at the Residential Property. She stated the Tenants had only brought up the repair issues after they were asked to pay the outstanding rent.

Tenants' Evidence and Submissions

- [8] The Tenant stated he was served with the Application on July 26, 2023, after the Rental Office had closed, and this would be considered service on July 27, 2023. He stated this would be outside of the 5 days as required by the *Act* and the Application should be invalid. He stated that this hearing was a re-hearing of the previous hearing and that the matter of outstanding rent had already been decided.
- [9] The Tenant stated he was notified in May 2023 that the Representative's property management company would be taking over management of the property. He stated he checked the corporate registry and that property management company does not exist. The Tenant stated the Representative should not be authorized to act on behalf of the Landlords.
- [10] The Tenant stated the Landlords are absentee Landlords and they have told the Tenants not to contact the Landlords. He stated after Hurricane Fiona he was without power for 45 days. The Tenants repaired the roof at their own expense in the amount of \$4,256.00. The Tenant stated a recent inspection from Environmental Health ("E.H.") showed that the Residential Property needed several repairs. A copy of the E.H. report was submitted into evidence.
- [11] The Tenant stated because of the repairs which need to be completed and because the Tenants had to eat out on a regular basis because their fridge did not work, the Tenants should not be required to pay full rent to the Landlord. The Tenant submitted a document with the breakdown of costs that the Tenants have occurred and he stated the Landlords owe the Tenants \$39,864.50.

Analysis

- [12] Subsections 19.(1) and 85.(1) of the *Act* state:

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.*

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.*

- [13] The Officer notes that the Tenant did not dispute that there was rent owing. The Tenant testified the Tenants should not have to pay the outstanding rent because the Landlords have failed to complete required repairs at the property and the Tenants have incurred out of pockets costs as a result.
- [14] The Officer notes that the Tenants are not permitted to withhold rent unless the Tenants have an express right under the *Act* to deduct or withhold all or a portion of the rent. In this case, the Officer finds that the Tenants do not have the right to deduct or withhold rent, pursuant to subsection 19.(1) of the *Act*. Based on the totality of the evidence the Officer finds that the Tenants owe the Landlords rent in the amount of \$18,900.00.

Conclusion

[15] The Application is allowed.

[16] The Tenants shall pay the Landlords the outstanding rent in the amount of \$18,900.00 forthwith upon receipt of this Order.

IT IS THEREFORE ORDERED THAT

- A. The Tenants shall pay the Landlords the outstanding rent in the amount of \$18,900.00 forthwith upon receipt of this Order.
- 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 21st day of August, 2023.

(sgd.) Mitchell King

Mitchell King
Residential Tenancy Officer

NOTICERight 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.