

## Introduction

- [1] On August 7, 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 4A) dated July 5, 2023, effective July 25, 2023 (the "Notice"). The Notice was served on the Tenants for the following reason:

*You have not paid your rent in the amount of \$12,814.86.*

- [3] On July 5, 2023, the Landlord served the Notice on the Tenants by posting it to the Tenants' door. On August 7, 2023, the Landlord served the Application on the Tenants by email.

- [4] On August 28, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord participated in the hearing. The Rental Office contacted J.B. at the time of the hearing and was informed that the Tenants would not be participating in the hearing.

## Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?
- ii. Do the Tenants owe the Landlord rent?

## Summary of the Evidence

- [5] The Landlord and the Tenants entered into a written one-year fixed-term tenancy agreement on November 1, 2022. The Residential Property is a single detached house. Rent is \$2,400.00 per month, due on the first of each month. A security deposit of \$2,400.00 was required and paid.

### Landlord's Evidence and Submissions

- [6] The Landlord submitted that the Tenants owe \$15,484.40 for the rent and utilities owing.
- [7] The Landlord testified that the Tenants failed to pay rent from March 2023 to August 2023, totaling \$14,400.00.
- [8] The Landlord testified that the Tenants failed to pay a number of heating and electricity bills, totaling \$1,084.40. The Landlord submitted invoices of two oil heating bills and four electrical bills. The Landlord also submitted a bank record showing that the Tenants underpaid the April electricity bill.
- [9] The Landlord submitted copies of email and text message exchanges with the Tenants. The messages show the Landlord sent numerous reminders to the Tenants of their amounts owing for rent, heat and electricity. The messages also show the Tenants acknowledging the amount owing, stating their intentions to pay, and the Landlord following up when no payments were made.
- [10] The Landlord submitted a copy of the written tenancy agreement which shows that the Tenants are responsible for paying for the heating and electricity of the rental unit.

### Tenants' Evidence and Submissions

- [11] The Tenants did not submit any evidence.

## Analysis

[12] 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.

### ***Unpaid utilities***

60.(6) A landlord may treat unpaid utility charges as unpaid rent and may give a notice of termination under this section where

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord; and
- (b) the utility charges are unpaid more than one month after the tenant is given a written demand for payment of them.

### ***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.

[13] Based on the totality of the evidence, the Officer finds that the Notice was properly served on the Tenants 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' (Form 2A) with the Rental Office and are 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 six-month period.

[14] The Officer finds that based on the undisputed testimony of the Landlord, the Landlord has established that the Tenants have failed to pay rent owing to the Landlord. The Officer notes that the Tenants failed to pay for heating and electricity which are their responsibility under the tenancy agreement, and are recoverable by the Landlord as rent owing pursuant to subsection 60.(6) of the *Act*. The Officer finds that the Tenants owe \$15,484.40 in unpaid rent to the Landlord.

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

### **Conclusion**

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

[17] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on September 8, 2023, and the Tenants shall vacate the Residential Property by this time and date.

[18] The Tenants shall pay the Landlord the outstanding rent in the amount of \$15,484.40 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 September 8, 2023, and the Tenants shall vacate the Residential Property by this time and date.
- B. The Tenants shall pay the Landlord the outstanding rent in the amount of \$15,484.40 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 1st day of September, 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.