

Introduction

- [1] On August 3, 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 July 2, 2023, effective July 12, 2023 (the "Notice"). The Notice was served on the Tenant for the following reason:

You have not paid your rent in the amount of \$1,450.00.

- [3] On July 2, 2023, the Landlord served the Notice on the Tenant by hand delivery. On August 3, 2023, the Landlord served the Application on the Tenant by email.

- [4] On September 5, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord, a witness for the Landlord, and the Tenant participated in the hearing.

Issues to be Decided

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

Summary of the Evidence

- [5] The Landlord and the Tenant entered into a verbal month-to-month tenancy agreement. The Landlord testified that the tenancy agreement began in December of 2021. The Tenant testified that the tenancy agreement began in January of 2022. The Residential Property is a mobile home. Rent is \$1,450.00 per month, due on the first of each month. A security deposit was not required.

Landlord's Evidence and Submissions

- [6] The Landlord testified that the Tenant did not pay rent for the months of July and August, 2023. The Landlord testified that the Tenant told her that she would not pay rent until the oven in the rental unit was fixed. The Landlord testified that she has attempted to arrange for the oven to be fixed, but has been unsuccessful.
- [7] The Landlord further testified extensively that she needs her property back due to her age, health, and family obligations.
- [8] The Landlord submitted copies of text messages with the Tenant. The text messages show the Landlord requested payment of rent. The Tenant responded by telling the Landlord to fix the oven. The Landlord further submitted bank records showing non-payment of rent for the month of July, 2023.
- [9] The Landlord testified that she accepted rent from the Tenant for the month of September, 2023. However, the Landlord testified that this did not negate the Notice. The Landlord testified that the Tenant had not yet found another place to live, so she accepted payment of rent for September, 2023, on the condition that she vacate the Residential Property on September "31", 2023.

Tenant's Evidence and Submissions

- [10] The Tenant testified that she did not pay rent for July and August, 2023 because the Landlord would not fix her oven. The Tenant testified that she had intended to file a Form 2A Tenant Application to Determine Dispute in response to the Landlord's Notice, but did not do so as she was unsure of which clauses to select.
- [11] The Tenant testified that the verbal tenancy agreement included a clause that it would only terminate if she had found another place to live. The Tenant testified that she has been looking for other places to live, but has been unsuccessful.
- [12] The Tenant testified that she paid rent for the month of September, 2023.

Analysis

- [13] The relevant sections of the Act instruct:

Tenant shall pay rent when due

19. (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.*

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.*

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.*

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.

- [14] 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.
- [15] The Officer notes that while the Landlord has established a valid basis for terminating the rental agreement, the Landlord's testimony on needing possession of the property due to her age, health, and family obligations were irrelevant to the Application and were not considered.
- [16] The Officer finds that based on the testimony of both parties, the Tenant has failed to pay rent owing to the Landlord for two months. The Officer notes subsection 19.(1) of the *Act*, which states that a tenant is obliged to pay rent, regardless of whether the landlord has complied with the *Act*. The Officer notes that the Tenant had the opportunity to make an application for an order for repairs to the rental unit or return of rent. The Officer finds that the Tenant owes \$2,900.00 in unpaid rent to the Landlord.
- [17] The Officer finds based on the evidence that the Notice is valid and the Application is allowed. The Officer notes that the Landlord agreed to September "31", 2023 as a vacate date. The Officer notes that there is no 31st day of September, and that September 30th is a Saturday and a holiday. Therefore, September 29, 2023 shall be the vacate date.

Conclusion

- [18] The Notice is valid and the Application is allowed.
- [19] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on September 29, 2023, and the Tenant shall vacate the Residential Property by this time and date.
- [20] The Tenant shall pay the Landlord the outstanding rent in the amount of \$2,900.00 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 September 29, 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 \$2,900.00 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 6th day of September, 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.