

Introduction

- [1] On August 9, 2023, the Landlord 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 to pay outstanding rent; and

To request my tenant vacate the rental unit and ordering the Sheriff to put me into possession of the rental unit.

- [2] Attached to the Application was an Eviction Notice (Form 4A) dated July 11, 2023, effective July 31, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons:

You have not paid your rent in the amount of \$2,055.00; and

You are repeatedly late in paying rent.

- [3] On July 11, 2023, the Landlord served the Notice on the Tenant by putting it under the Tenant's door. The Tenant emailed the Landlord stating that the Notice had been received. On August 14, 2023, the Landlord served the Application on the Tenant by putting it under the Tenant's door.
- [4] On September 6, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant did not call into the hearing at the scheduled time of 9:00 a.m. The hearing proceeded in the Tenant's absence. The Tenant called into the hearing at 9:26 a.m. and the hearing continued with both parties participating.

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] In February of 2023 the Tenant and the Landlord entered into a verbal month-to-month tenancy agreement for the Residential Property. The Residential Property consists of a single apartment in a five-unit building. Rent is \$752.00 per month due on the first day of the month. A security deposit of \$690.00 was paid.

Landlord's Evidence and Submissions

- [6] The Landlord stated the Tenant is repeatedly late in paying rent and often does not pay the rent in full. He stated the Tenant owes \$615.00 for June 2023, \$690.00 for July 2023, \$752.00 for August 2023, and \$752.00 for September 2023, totaling of \$2,809.00. The Landlord stated the Tenant has promised to pay the rent owing several times but the rent has not been paid in full. The Landlord stated the rent increased in August 2023 pursuant to a greater than allowable rent increase Order.

Tenant's Evidence and Submissions

- [7] The Tenant agreed that he owes the amount of rent as stated by the Landlord. He stated he lost his job and is having a hard time paying the rent. The Tenant stated he would pay the Landlord the amount of rent that is owing.

Analysis

[8] The Act states:

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.*

[9] Based on the totality of the evidence, the Officer finds that although the Notice was not served pursuant to section 100 of the Act, the Tenant acknowledged receipt of the Notice, and the Tenant failed to 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.

[10] The Officer finds that the Landlord has established a valid basis for terminating the rental agreement due to non-payment of rent in the amount of \$2,809.00 and that the Tenant owes the Landlord \$2,809.00 in outstanding rent.

Conclusion

- [11] The Notice is valid and the Application is allowed.
- [12] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on September 14, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- [13] The Tenant shall pay the Landlord \$2,809.00 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 14, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- B. The Tenant shall pay the Landlord \$2,809.00 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 7th day of September, 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 **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.