

Introduction

- [1] On August 28, 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;

To request an earlier termination of the tenancy agreement;

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

To request an order to permit the disposal of my tenant's personal property.

- [2] Attached to the Application was an Eviction Notice (Form 4A) dated August 9, 2023, effective August 28, 2023 (the "Notice"). The Notice was served on the Tenants for the following reason:

You have not paid your rent in the amount of \$1,050.00.

- [3] On August 9, 2023, the Landlord served the Notice on the Tenants by posting it to the Tenants' door. On August 28, 2023, the Landlord served the Application on the Tenant by posting it to the Tenants' door.
- [4] On September 9, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord, a translator for the Landlord, and one of the Tenants ("C.S.") participated in the hearing.

Issue 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?
- iii. Is an earlier termination of the tenancy agreement warranted?
- iv. Is the Landlord entitled to an order permitting them to dispose of the abandoned personal property?

Summary of the Evidence

- [5] The Landlord and the Tenants entered into a written one-year fixed-term tenancy agreement. The tenancy agreement began on March 1, 2023. The Residential Property is an apartment in an 11-unit apartment building. Rent is \$1,050.00 per month, due on the first of each month. A security deposit of \$1,050.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord testified that the Tenant did not pay rent for the months of August and September, and owes \$50.00 for the month of July. The Landlord is claiming rent owing in the amount of \$2,150.00 in rent owing for the full months of August and September, as well as \$50.00 owing from July. The Landlord requested that the Tenants be removed as soon as possible so that he could get another tenant and recoup his losses.

Tenants' Evidence and Submissions

- [7] C.S. confirmed that there was rent outstanding. C.S. testified that he has experienced a rough patch lately which has made it hard to make payments. C.S. testified that the other Tenant moved out, but he plans to make the full payments by himself.
- [8] C.S. further testified that someone broke into the rental unit and stole things from it, which partially prevented him from being able to pay rent. C.S. testified that he does not want to leave the rental unit, but he understands that he may be required to do so.

Analysis

- [9] 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.*

Abandoned Personal Property

43. (2) *Where a tenant abandons or vacates a rental unit and leaves personal property on the residential property, the landlord shall either*

- (a) *remove the personal property and immediately place it in safe storage; or*
- (b) *store the personal property on the residential property in a safe manner.*

Minimum Storage Period

43. (4) *The personal property required to be stored under subsection (2) shall be stored for not less than one month or a lesser period ordered by the Director, unless the tenant takes possession of the personal property before the applicable period has elapsed.*

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.

Landlord may request earlier termination date

61.(7) *Despite subsection (3), a landlord who wishes to give notice of termination under subsection (1) may make an application to the Director to request an order*

(a) ending a tenancy on a date that is earlier than the tenancy would end if the notice of termination were given under subsection (1); and

(b) granting the landlord an order of possession in respect of the rental unit.

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.

- [10] 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 tenancy agreement due to non-payment of rent.
- [11] The Officer finds that based on the testimony of both parties, the Tenants have failed to pay rent owing to the Landlord. The Officer finds that the Tenants have not paid rent for the months of August and September, and owe a further \$50.00 from the month of July. 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*.
- [12] The Officer finds that the Tenants owe \$50.00 in rent for July, \$1,050.00 in rent for August, and \$655.89 in pro-rated rent for September up to the ordered vacate date.
- [13] With regards to an earlier termination of the tenancy agreement, because the vacate date on the Notice (August 28, 2023) has already passed, and non-payment of rent is not grounds for earlier termination, the Officer does not need to make a determination if an earlier termination date is warranted.
- [14] With regards to disposal of the Tenants' personal property, the Tenants have not abandoned or vacated the rental unit and the Landlord has not taken possession of any of the Tenants' personal property. The Application for disposal of the Tenants' personal property is denied.

Conclusion

- [15] The Notice is valid and the Application is allowed in part.
- [16] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on September 19, 2023, and the Tenants shall vacate the Residential Property by this time and date.
- [17] The Tenants shall pay the Landlord the outstanding rent in the amount of \$1,755.89 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 19, 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 \$1,755.89 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 12th 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.