

Introduction

- [1] On July 31, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed:

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 into possession of the rental unit;
To request an order to permit the disposal of my tenant's personal property; and
To make a claim against the security deposit.

- [2] Attached to the Application was an Eviction Notice (Form 4A) dated July 12, 2023, effective July 22, 2023, (the "Notice"). The Notice was posted on the Tenant's door on July 12, 2023.
- [3] On September 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord participated and the Tenant did not participate.
- [4] At the beginning of the hearing the Landlord stated he was only seeking rent owing as the Tenant had already vacated the Residential Property and the Landlord had already disposed of the abandoned personal property. He stated he was aware he could not make a claim against the security deposit as it had not been paid.

Issue to be Decided

- i. Does the Tenant owe the Landlord rent?

Summary of the Evidence

- [5] On July 1, 2023, the Landlord and Tenant entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property consists of a single-family house. Rent was \$1,500.00 per month due on the first day of each month. A security deposit of \$1,500.00 was required but not paid. The Tenant vacated the Residential Property around July 31, 2023.

Landlord's Evidence and Submissions

- [6] The Landlord stated he allowed the Tenant to move some of his belongings into the Residential Property in June 2023 so the Tenant would not have to pay storage costs when moving out of his old residence. The Tenant was not supposed to move in until July 1, 2023. The Landlord stated the Tenant moved into the Residential Property while he was moving in his belongings and before any rent was paid.
- [7] The Landlord requested several times for the Tenant to pay rent but the Tenant always had excuses. The Landlord stated the Tenant was required to pay first and last month's rent before moving into the property but the Tenant did not pay any rent. The Landlord submitted copies of text messages between the Landlord and the Tenant showing that the Landlord asked the Tenant for the rent payment several times.
- [8] On July 9, 2023, the Landlord attended the Residential Property to speak to the Tenant about paying the rent but the Tenant threatened violence against the Landlord. The Landlord then called the police. On July 12, 2023, the Landlord served the Tenant with an eviction notice for non-payment of rent in the amount of \$3,000.00.

- [9] The Landlord stated he attended the Residential Property on August 4, 2023, and found that the Tenant had vacated the property and he changed the locks. He does not know the exact date the Tenant had left. He stated he could not rent out the property during August 2023 because of the mess the Tenant left behind and the Landlord was required to clean the Residential Property. New tenants moved in on September 1, 2023.

Analysis

- [10] The Landlord is seeking that the Tenant pay outstanding rent in the amount of \$3,000.00 for July 2023 and August 2023. He stated the Tenant was required to pay first and last months rent but the Tenant did not pay any rent. The Tenant also failed to pay a security deposit.

- [11] 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.

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.

- [12] The tenancy agreement started on July 1, 2023. The Landlord stated the Tenant was required to pay first and last month's rent prior to moving in but failed to do so. The Officer notes that there is nothing in the *Act* which requires a Tenant to pay first and last month's rent at the beginning of a tenancy. If a Tenant does pay "last month's rent" then it would be considered a security deposit or a partial payment of the next rent payment, as subsection 14.(5) of the *Act* states:

Where a landlord receives money or other value from a tenant that exceeds the amount of rent payable in respect of the rental unit, the excess money or value

(a) shall be considered a security deposit; or

(b) where the excess money or value, as a security deposit, would exceed the amount permitted under subsection (3), shall be considered partial payment of the next rent payment required under the tenancy agreement.

- [13] The Officer notes that the Tenant did not pay any rent, therefore there is no money exceeding the value of rent payable to be considered as a security deposit or for a partial payment of the next rent payment.

- [14] The Notice stated the Tenant was required to vacate the property by July 22, 2023. In an email to the Rental Office dated July 31, 2023, the Landlord stated the property was vacant by that date but the Tenant still had property inside. Therefore, the Officer is unable to order the payment of any outstanding rent for August 2023, as the Tenant had vacated the Residential Property prior to August 2023 pursuant to the Notice.

- [15] The Officer finds that the Landlord has established that the Tenant owes the Landlord \$1,500.00 in outstanding rent for July 2023.

Conclusion

[16] The Application is allowed in part.

[17] The Tenant shall pay the Landlord the outstanding rent in the amount of \$1,500.00 forthwith upon receipt of this Order.

IT IS THEREFORE ORDERED THAT

- A. The Tenant shall pay the Landlord the outstanding rent in the amount of \$1,500.00 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 26th day of September, 2023.

(sgd.) Mitchell King
Mitchell King
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 **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.