

Introduction

- [1] On September 18, 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 remedy pursuant to the *Act*:

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 September 3, 2023, effective September 23, 2023 (the "Notice"). The Notice was served on the Tenant for the following reasons:

You have not paid your rent in the amount of \$1,200.00; and

You have not paid the security deposit.

- [3] On September 3, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's door. On September 18, 2023, the Landlord served the Application on the Tenant by posting it on the Tenant's door.
- [4] On October 5, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A representative for the Landlord (the "Representative") participated in the hearing. The Tenant did not participate in the hearing. The Rental Office attempted to telephone the Tenant and emailed the Tenant before the Officer proceeded with the hearing.

Issue to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [5] The Landlord entered into a verbal month-to-month tenancy agreement with the Tenant on August 2, 2023. The Residential Property is a motel unit. Rent is \$1,200.00 per month, due on the second day of each month. The Representative stated that a \$1,200.00 security deposit was required but not paid by the Tenant.

Landlord's Evidence and Submissions

- [6] The Representative testified that the Tenant has not paid rent for the months of September and October of 2023. The Representative further testified that the Tenant has not paid the security deposit in the amount of \$1,200.00.
- [7] The Representative testified that the Tenant remains in the rental unit despite serving the Notice.

Tenant's Evidence and Submissions

- [8] The Tenant did not submit any evidence.

Analysis

- [9] The relevant sections of the *Act* instruct:

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's notice for cause

61.(1) *A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*

- (a) *the tenant does not pay the security deposit within 10 days of the date it is required to be paid under the tenancy agreement*

Powers of the Director

85.(1) *After hearing an application, the Director may make an order*

- (f) *directing a tenant to vacate the rental unit on a specified date.*

[10] Based on the totality of the evidence, the Officer finds that the Notice was properly served on the Tenant. The Tenant did not pay the rent owing for September and October 2023, did not pay the security deposit, and did not file a 'Section 75 Application' (Form 2A) with the Rental Office. The Tenant 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 tenancy agreement.

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

Conclusion

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

[13] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on October 17, 2023, and the Tenant and all other occupants shall vacate the Residential Property by this time and date.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on October 17, 2023, and the Tenant and all other occupants shall vacate the Residential Property by this time and date.
- 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 10th day of October, 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.