

Introduction

- [1] On September 25, 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 4) dated September 2, 2023, effective September 22, 2023, (the "Notice"). The Notice was posted on the Tenant's door and emailed to the Tenant and the Occupant on September 2, 2023, for the following reason:

You have not paid your rent in the amount of \$1,206.00, which was due on the 1st day of September 2023.

- [3] On October 5, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and the Occupant participated.

Issues to be Decided

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

Summary of the Evidence

- [4] In November of 2020 the Landlords purchased the Residential Property. In December of 2020 the Tenant along with two other individuals and the Landlords entered into a written fixed-term tenancy agreement for the Residential Property, which then converted to a month-to-month agreement. The Residential Property consists of a single apartment in a six-unit building. Rent is \$1,206.00 per month due on the first day of the month. A security deposit of \$450.00 was paid.

Landlord's Evidence and Submissions

- [5] The Landlord stated the Tenant was late in paying rent for several months. In August of 2023, the Occupant advised the Landlord that he wanted to take over the tenancy agreement, as the Tenant was being incarcerated. The Landlord stated he did not know the Occupant had been living there with the Tenant until August 5, 2023.
- [6] The Landlord stated he did not agree to enter into a tenancy agreement with the Occupant and wanted him to fill out an application and to show that he could pay rent on time. The Landlord stated he has never received an application from the Occupant and no rent has been paid for September or October 2023 in the amount of \$2,412.00 (\$1,206.00 x 2). The Landlord submitted a copy of the rent ledger to the Officer after the hearing which showed no rent had been paid for September or October 2023.
- [7] The Landlord stated the last communication he received from the Tenant was in August 2023 and he does not know if the Tenant is still living at the Residential Property or not. He stated that he does not wish to enter into a tenancy agreement with the Occupant. The Landlord submitted copies of text messages between the Landlord and the Occupant into evidence.

Tenant's Evidence and Submissions

- [8] The Tenant did not provide any evidence or submissions. The Occupant participated in the hearing on his own behalf. The Occupant stated he moved into the Residential Property in March or April 2023 with the Tenant to help the Tenant to pay rent. He stated he paid the Tenant \$600.00 per month for rent. He stated he was not aware the Tenant was having a hard time paying rent to the Landlord. The Occupant stated the Tenant only told him he was going to be incarcerated two days before he was to go, which was in August 2023. The Occupant then contacted the Landlord to take over the tenancy agreement.
- [9] The Occupant stated he is having a hard time paying rent because he was injured at work and is waiting for the Workers Compensation Board to pay him. He stated he will be receiving some back pay this weekend. The Occupant stated he will pay the outstanding rent as soon as he can and will not be late on rent in the future. He agreed that \$2,412.00 in rent is still outstanding.
- [10] A copy of the rent ledger was sent to the Tenant and Occupant for any post-hearing submissions. On October 10, 2023, the Occupant submitted that he was unable to pay the rent over the weekend as he had not received his money from the Workers Compensation Board.

Analysis

- [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.*

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.

- [12] Based on the totality of the evidence, the Officer finds that the Notice was properly served on the Tenant. Further, the Tenant did not file a 'Section 75 Application' (Form 2A) with the Rental Office within 10 days of receiving the Notice. Therefore, the Tenant is deemed to have accepted the Notice pursuant to subsection 60.(5) of the Act.
- [13] The Officer further finds that the Landlord has established the Tenant has failed to pay \$2,412.00 in rent and that the Tenant owes the Landlord \$2,412.00 in outstanding rent.

Conclusion

- [14] The Notice is valid and the Application is allowed.
- [15] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on October 18, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- [16] The Tenant shall pay the Landlord \$2,412.00 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 October 18, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- B. The Tenant shall pay the Landlord \$2,412.00 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 11th day of October, 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 **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.