

Introduction

- [1] On October 10, 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 12, 2023, effective October 2, 2023 (the “Notice”). The Notice was served on the Tenants for the following reason:

You have failed to pay your rent in the amount of \$5,625.00.

- [3] On September 12, 2023, the Landlord served the Notice on the Tenants by hand delivery. On October 10, 2023, the Landlord served the Application on the Tenants by hand delivery.
- [4] On October 31, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). A representative for the Landlord (“J.D.”) and one of the Tenants (“S.B.”) participated in the hearing.

Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [5] On December 1, 2016, the Tenants and the Landlord entered into a written month-to-month tenancy agreement. The Residential Property is a single detached house. Rent is \$1,125.00 per month, due on the first day of each month. A security deposit was not required.

Landlord’s Evidence

- [6] J.D. testified that the Tenants have not paid rent since April 2023. The Landlord submitted a rent ledger dated September 11, 2023, which showed that rent has not been paid since May with a total outstanding balance as of September 11, 2023 of \$5,625.00. J.D. further testified that rent for October 2023 has not been paid.
- [7] J.D. testified that he served the Notice by hand delivery and that the Tenants did not dispute the Notice.
- [8] J.D. testified that he had no choice but to evict the Tenants as he cannot afford the Residential Property without receiving rent payments.

Tenants’ Evidence

- [9] S.B. did not contest the Landlord’s submissions. S.B. acknowledged that rent has not been paid since April 2023 and that the Tenants did not dispute the Notice. S.B. testified that rent was previously paid for by government subsidy, but that subsidy ended in May of 2023, although she only became aware of this in July 2023.
- [10] S.B. testified that the Tenants will be leaving the Residential Property, but are seeking to stay a few more days to have a place to stay until they move into their new residence.

Analysis

[11] The relevant sections of the Act instruct:

Tenant shall pay rent when due

19.(1) 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

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

[12] The Officer finds that based on the totality of the evidence provided, the Landlord has established a valid basis for terminating the tenancy agreement due to non-payment of rent by the Tenants from May to October 2023, pursuant to subsection 60.(1) of the Act. The Officer notes the Landlord's rent ledger and S.B.'s acknowledgment that rent was not paid during this period.

[13] Further, the Officer finds that the Notice was properly served on the Tenants and that the Tenants did not file a 'Section 75 Application' (Form 2A) with the Rental Office. The Tenants are therefore deemed to have accepted the Notice, pursuant to subsection 60.(5) of the Act.

[14] The Officer finds based on the evidence and testimony provided at the hearing that the Notice is valid and the Application is allowed.

Conclusion

- [15] The Notice is valid and the Application is allowed.
- [16] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on November 9, 2023, and the Tenants 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 November 9, 2023, and the Tenants 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 2nd day of November, 2023.

(sgd.) Colin Trewin

Colin Trewin
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.