

## Introduction

- [1] On October 10, 2023 the Landlords filed a *Landlord Application to Determine Dispute* (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking the following remedies:

*To request an order directing my tenant to pay outstanding rent;*

*To request an earlier termination of the tenancy agreement; and*

*To request my tenant, vacate the rental unit and ordering the Sheriff to put me into possession of the rental unit.*

- [2] The request for an earlier termination of the tenancy agreement was rejected by the Rental Office because it did not meet the statutory requirements to be heard.
- [3] Attached to the Application was a *Landlord Notice of Termination* (Form 4A) dated September 18, 2023 effective October 9, 2023 (the "Notice"). The Notice was given to the Tenants for the following reason:

*You have not paid your rent in the amount of \$2,691.31.*

- [4] All documents were properly served on the parties in accordance with section 100.(1) of the *Act*.
- [5] On October 26, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). One of the Landlords ("H.G."), a representative for the Landlords ("H.S."), and one of the Tenants ("R.M.") participated in the hearing.

## Issues to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?
- ii. Do the Tenants owe outstanding rent to the Landlords?

## Summary of the Evidence

- [6] On March 28, 2023, the Landlords and the Tenants entered into a written one-year fixed-term tenancy agreement from April 15, 2023 to April 14, 2024 for the Residential Property. The Residential Property is a single detached house. Rent is \$2,200.00 due on the fifteenth (15<sup>th</sup>) day of the month. A security deposit of \$2,200.00 was required and paid.

### Landlords' Evidence

- [7] H.S. testified that the Tenant has not paid rent in the amount of \$4,400.00 for the period of September 15, 2023 to October 14, 2023, and for the period of October 15, 2023 to November 14, 2023. The Landlords submitted bank records showing prior deposits received by the Tenants.
- [8] H.S. testified that the Tenants have also failed to make electricity, water and sewer payments. The Landlords submitted that electricity, water and sewer are the responsibilities of the Tenants under the tenancy agreement. The Landlords submitted a copy of the tenancy agreement which indicates that payments for water and electricity are the responsibility of the Tenants.

- [9] The Landlords submitted that the Tenants owe \$491.31 in unpaid electricity costs, and \$175.24 in unpaid water and sewer bills. The Landlords submitted copies of an electric bill in the amount of \$176.62 from June 8, 2023 to July 10, 2023, an electric bill in the amount of \$235.99 from July 10, 2023 to August 9, 2023, an electric bill in the amount of \$787.70 from August 9, 2023 to August 24, 2023, and a water and sewer bill in the amount of \$175.70 from July 1, 2023 to September 30, 2023.
- [10] The Landlords are seeking \$5,066.55 in total rent owing, composed of \$4,400.00 in unpaid monthly rent, \$491.31 in unpaid electricity bills, and \$175.24 in unpaid water and sewer bills.
- [11] The Landlords further submitted that they may seek remuneration for the potential loss of a full tank oil valued at approximately \$1,200.00.
- [12] H.G. and H.S. additionally testified that the Tenants painted parts of the interior of the rental unit, although this was done without permission and without any agreement that the Tenants would be reimbursed for this work.

### **Tenants' Evidence**

- [13] R.M. acknowledged that the Tenants have not paid rent since August 2023. R.M. testified that he had expected money to come in from his job, but this was delayed, leading him to not have the funds to pay rent.
- [14] R.M. testified that he would like to continue to stay at the Residential Property, but understands that the Tenants' non-payment of rent has created difficulties for the Landlords.
- [15] R.M. further testified that he spent roughly \$1,600.00 on painting the interior of the rental unit. R.M. testified that he is not seeking compensation for the work he performed, but suggested it is indicative of his good faith toward the Landlords.

### **Analysis**

- [16] The Officer begins by referencing the relevant law for the Application. The Landlords' reason for terminating the tenancy agreement is pursuant to subsection 60.(1) of the *Act*, which states:

**60. Landlord's notice for non-payment of rent**

- (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.*

- [17] Further, subsections 51.(4), 60.(5) and 60.(6) of the *Act* state:

**51.(4) Landlord's right to possession restricted**

*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.*

**60.(5) Tenant presumed to accept notice**

*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.*

**Unpaid utilities**

- (6) *A landlord may treat unpaid utility charges as unpaid rent and may give a notice of termination under this section where*
- (a) *a tenancy agreement requires the tenant to pay utility charges to the landlord; and*
  - (b) *the utility charges are unpaid more than one month after the tenant is given a written demand for payment of them*

- [18] The Officer finds that after reviewing the documentary evidence, and the testimony provided by the parties, that the Notice was properly served on the Tenants by posting it on the Tenants' door on September 18, 2023. Further, the Officer finds that the documentary evidence, and testimony of the parties establish that the Tenants did not pay the outstanding rent within ten (10) days of receiving the Notice, and the Tenants did not file a *Section 75 Application* (Form 2A) with the Rental Office within ten (10) days of receiving the Notice. Therefore, the Tenants are deemed to have accepted the Notice pursuant to subsections 60.(5) of the *Act*.
- [19] Further, the Officer finds that the Landlords have established valid grounds for terminating the tenancy agreement for non-payment of rent pursuant to subsection 60.(1) of the *Act*.
- [20] The Officer finds that the Landlords have established their claim that the Tenants have not paid the rent due on September 15, 2023, or October 15, 2023. The Officer finds that the amount of rent owing from September 15, 2023 to November 14, 2023 is \$4,400.00.
- [21] Additionally, the Officer finds that the Landlords have provided sufficient evidence to establish that the Tenants owe \$491.31 in electric bills, and \$175.24 in water and sewer bills.
- [22] However, the Officer notes that the Landlords have failed to establish based on the evidence that the Tenants owe \$1,200.00 for depleting the Landlords' oil tank.
- [23] Pursuant to sub-subsections 85.(1)(b) and (f) of the *Act*, which state:

**85. Powers of the Director**

- (1) *After hearing an application, the Director may make an order*
- (b) *directing payment or repayment of money from a landlord to a tenant or from a tenant to a landlord; and*
  - (f) *directing a tenant to vacate the rental unit on a specified date.*
- [24] The Officer finds that the tenancy agreements shall terminate effective 5:00 p.m. on November 14, 2023. The Tenants shall vacate the Residential Property by this time and date.
- [25] The Officer finds that the Tenants shall pay the Landlords in the amount of \$5,066.55, forthwith. The calculations are as follows:

| Item  | Amount            |
|---|-------------------|
| <b>Rent:</b> September 15 – October 14 2023                     | \$2,200.00        |
| <b>Rent:</b> October 15, 2023 – November 14, 2023               | \$2,200.00        |
| <b>Electric Bills:</b> June 8, 2023 – September 30, 2023        | \$491.31          |
| <b>Water and Sewer Bill:</b> July 1, 2023 to September 30, 2023 | \$175.24          |
| <b>Total</b>  | <b>\$5,066.55</b> |

## Conclusion

- [26] The Notice is valid and the Application is allowed.
- [27] The tenancy agreement between the parties shall terminate effective **5:00 p.m. on November 14, 2023**. The Tenants shall vacate the Residential Property by this time and date.
- [28] The Tenants shall pay the Landlords \$5,066.55 forthwith.
- [29] **Order LD23-504 was served on the parties by e-mail on November 3, 2023.**

## IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective **5:00 p.m. on November 14, 2023**. The Tenants shall vacate the Residential Property by this time and date.
- B. The Tenants shall pay the Landlords \$5,066.55 forthwith.
- C. A certified copy of Order LD23-504 may be filed in the Supreme Court and enforced by Sheriff Serviced as permitted by the *Act*.

**DATED** at Charlottetown, Prince Edward Island, this 3rd day of November, 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.