

## 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 7, 2023, effective September 27, 2023 (the "Notice"). The Notice was served on the Tenant for the following reason:

*You have not paid your rent in the amount of \$1,200.00.*

- [3] On September 7, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's door, in accordance with subsection 100.(1) of the *Act*.
- [4] On November 1, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord both participated in 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 20, 2017. The Residential Property is one unit of a duplex. Rent is \$600.00 per month, due on the first day of each month. A security deposit was not required.

### Landlord's Evidence and Submissions

- [6] The Landlord testified that he did not receive rent from the Tenant for the months of March and May of 2023. The Landlord submitted copies of handwritten receipts for rent received from the Tenant from December 30, 2022 to October 1, 2023, however, there are no receipts for March or May 2023. The receipt dated April 3, 2023 states "Rent for March 2023, payment not made in March". The receipt dated June 1, 2023 states "Rent for April 2023, payment in April credited to March". Each receipt from July to October 2023 state that the Tenant is two months in arrears on rent.
- [7] The Landlord testified that he had a conversation with the Tenant after May 2023 regarding rent in which he told the Tenant that prior issues could be forgotten if the Tenant pays the outstanding rent. The Landlord testified that he never gave the Tenant permission to not pay the two months of outstanding rent.
- [8] The Landlord testified that he waited until September 7, 2023 to serve the Tenant with the Notice so that she could have more time to pay the rent owing. The Landlord testified that the timing of the Notice was not any form of retaliation against the Tenant.
- [9] The Landlord argued that the Tenant's position that she could not pay rent due to an Emergency Protection Order "EPO" in place between the parties is invalid because the Tenant paid rent on April 3, 2023, as shown on the receipt, when the EPO was still in place. The Landlord argued that regardless, the rental arrears still should have been paid once the EPO expired on April 12, 2023.

**Tenant's Evidence and Submissions**

- [10] The Tenant testified that she did not pay rent for the months of March and April 2023, rather than March and May 2023 as stated by the Landlord. The Tenant argued that she did not pay rent for the months of March and April 2023 because of the EPO in place at the time between the parties.
- [11] The Tenant submitted a copy of the EPO into evidence which showed that the parties were ordered not to contact one another from February 11, 2023 to May 12, 2023. The Tenant testified that the EPO was later revised to end on April 12, 2023. The Tenant testified that she was told by police to have no contact with the Landlord, either directly or indirectly, which included contacting the Landlord to pay rent. As a result, the Tenant did not pay for rent in the months of March and April 2023. The Tenant further testified that a different kind of no contact order, which she could not specify, was in place until May 2023.
- [12] The Tenant testified that she did not pay retroactively for two months of rent after the expiration of the EPO because she was told by the Landlord that she did not have to pay it. The Tenant testified that they had a conversation where the Landlord expressed his desire to put past issues behind them and that the missing rent could be forgiven. The Tenant argued that the Landlord told her that she did not need to pay the two months of rental arrears.
- [13] The Tenant testified that she has a child with the Landlord and that around September 2023, the Landlord was contacted regarding child support payment obligations. The Tenant testified that soon after she found the Notice posted to her door. The Tenant argued that the Notice was retaliation from the Landlord for seeking child support and that it contradicted the conversation they had prior about forgiving the two months of rental arrears.
- [14] The Tenant testified that she received the Notice and did not file an application to set it aside. The Tenant testified that she thought that the hearing for the Landlord's Application for possession of the rental unit was her opportunity to dispute the Notice.

**Analysis**

- [15] 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) 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 presumed to accept notice***

*60.(5) Where a tenant who has received a notice of termination under this section does not 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;
- (f) directing a tenant to vacate the rental unit on a specified date;
- (n) extending or reducing any notice period under in this Act;
- (p) imposing terms and conditions the Director considers appropriate, including terms and conditions to ensure compliance with this Act, the regulations and the tenancy agreement;

- [16] The Officer finds that the Notice was properly served on the Tenant and that the Tenant did not pay the rent owing or file a '*Section 75 Application*' (Form 2A) with the Rental Office within 10 days of receiving the Notice. The Tenant is therefore deemed to have accepted the Notice, pursuant to subsection 60.(5) of the *Act*.
- [17] The Officer further 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 two months of rent in the total amount of \$1,200.00, pursuant to subsection 60.(1) of the *Act*. The Officer finds that the parties do not dispute the fact that two months of rent owing has not been paid by the Tenant. The Officer finds based on the evidence that the Landlord did not agree to release the Tenant from her obligation to pay two months in rental arrears. The Officer further notes the Landlord's receipts given to the Tenant indicated that the Tenant owed two months in rental arrears.
- [18] The Officer finds based on the evidence and testimony provided at the hearing that the Notice is valid and the Application is allowed. The tenancy agreement between the parties shall terminate on November 30, 2023. The Officer reminds the Tenant that must continue to pay rent to the Landlord for the month of November 2023.

**Conclusion**

- [19] The Notice is valid and the Application is allowed.
- [20] The tenancy agreement between the parties shall terminate effective **5:00 p.m. on November 30, 2023**. The Tenant shall vacate the Residential Property by this time and date.
- [21] **Order LD23-505 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 30, 2023**. The Tenant shall vacate the Residential Property by this time and date.
- B. A certified copy of Order LD23-505 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  
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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.