

Introduction

- [1] On October 25, 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 October 4, 2023, effective October 4, 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 \$1,400.00.

- [3] On October 4, 2023, the Landlord served the Notice on the Tenants by posting it to the Tenants' door. On October 25, 2023, the Landlord served the Application on the Tenants by posting it to the Tenants' door.
- [4] On November 2, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and both Tenants ("J.P." and "N.S.") 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 11, 2019, the Tenants and the Landlord entered into a written month-to-month tenancy agreement. The Residential Property is a single detached house. Rent is \$625.00 per month, due on the fifteenth day of each month. A security deposit was not required.

Landlord's Evidence

- [6] The Landlord testified that she has not received rent from the Tenants since July 2023. The Landlord submitted that the Tenants owe rent in the amount of \$2,025.00, which includes a small balance of rent which was outstanding prior to July 2023. The Landlord further testified that the Tenants owe an additional amount for utility costs, although the Landlord did not provide specific costs or copies of utility bills.
- [7] The Landlord testified that she had been told previously by the Tenants that they would vacate the rental unit by the end of October 2023, but failed to do so. The Landlord testified that she feels she has no other choice but to evict the Tenants as she cannot afford to forego receiving rent.

Tenants' Evidence

- [8] The Tenants acknowledged that they have not paid rent for the months of August, September, and October 2023. N.S. testified that the Tenants have experienced severe financial strain lately and have not been able to afford the rent.
- [9] N.S. testified that the Tenants have plans to vacate the rental unit and live with family.
- [10] N.S. further testified that the Tenants did not file an application with the Rental Office to dispute the Notice as they did not think they would be able to get the money together to pay the rent owing.

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 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.

[13] 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 rent by the Tenants pursuant to subsection 60.(1) of the Act. The Officer notes the undisputed testimonies of the parties that rent has not been paid since July 2023.

- [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 14, 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 14, 2023, and the Tenants and all other occupants shall vacate the Residential Property by this time and date.
- B. A certified copy of Order LD23-507 may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 6th 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.