

Introduction

- [1] On November 2, 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 the following remedies:

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 a *Landlord Eviction Notice* (Form 4A) dated October 10, 2023 effective October 30, 2023 (the "Notice"). The Notice was given to the Tenants for the following reason:

You have not paid your rent in the amount of \$2,900 with \$1500 payment being processed.

- [3] On October 10, 2023, the Landlord served the Notice on the Tenants by email. On November 2, 2023, the Landlord served the Application on the Tenants by email. All documents were properly served on the Tenants in accordance with subsection 100.(1) of the *Act*.
- [4] On November 9, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A representative for the Landlord ("M.P."), and one of the Tenants ("A.G.") 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 rent to the Landlord?

Summary of the Evidence

- [5] On December 19, 2022, the Landlord and the Tenants entered into a written one-year fixed-term tenancy agreement from January 1, 2023 to December 31, 2023 for the Residential Property. The Residential Property is a single unit in a multi-unit apartment building. Rent is \$1,425.00 due on the first day of the month. It was disputed as to whether the security deposit in the amount of \$1,425.00 had been paid by the Tenants.

Landlord's Evidence and Submissions

- [6] The Landlord submitted 14 pages of documentary evidence, including a rent ledger for the rental unit and copies of email exchanges with the Tenant regarding rent owing.
- [7] M.P. testified that the Tenants owe rent to the Landlord in the amount of \$3,327.50. This amount includes \$2,850.00 in rent owing from September 1, 2023 to October 31, 2023, \$427.50 in pro-rated rent up to the date of the hearing, and \$50.00 for two non-sufficient funds fees incurred by the Landlord when they attempted to withdraw rent from the Tenants' account.
- [8] M.P. testified that the Tenants were given multiple opportunities to pay the rent owing and avoid eviction. A copy of an email from M.P. to the Tenants dated October 18, 2023 shows that the Tenants were reminded that there was an outstanding rent balance of \$2,900.00, and that if they did not pay it by October 18, 2023, they would be evicted on October 30, 2023.
- [9] M.P. testified that she was unsure whether the Tenant had paid the security deposit to the Landlord.

Tenants' Evidence and Submissions

- [10] The Tenants did not submit any documentary evidence.
- [11] A.G. acknowledged that the amount of rent owing claimed by M.P. was accurate and stated that he planned to repay it soon. A.G. testified that the Tenants plan to vacate the rental unit as soon as possible.
- [12] A.G. testified that the security deposit had been paid in full to the Landlord.

Analysis

- [13] The Landlord's 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.*

- [14] Further, sub-subsections 20.(2)(c), 51.(4)(b) and 60.(5)(a) and (b) of the *Act* state:

20.(2) Fees charged by landlord

A landlord may charge a fee for

- (c) *a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;*

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.*

- [15] The Officer finds that based on the merits of this case, the rent ledger record, and the undisputed testimony of the parties, the Landlord has established valid grounds for terminating the tenancy agreement for non-payment of rent pursuant to subsection 60.(1) of the *Act*.
- [16] The Officer finds that after reviewing the documentary evidence and the testimony provided by the parties, the Notice was properly served on the Tenants by email on October 10, 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 also deemed to have accepted the Notice pursuant to subsection 60.(5) of the *Act*.

- [17] Further, the Officer finds that the Landlord have established its claim that the Tenants have not paid any rent for the months of September, October and November 2023. The Officer finds that the amount of rent owing from September 1, 2023 to October 31, 2023 is \$2,850.00. The Officer finds that the pro-rated monthly rent shall be adjusted to the ordered vacate date of November 21, 2023, based on the assumption that the Tenant will vacate on this day. The monthly rent is pro-rated as \$47.50 per day, therefore the amount of rent owing from November 1, 2023 to November 21, 2023 is \$997.50.
- [18] Additionally, the Officer finds that the Landlord has provided sufficient evidence to establish that the Tenants owe \$50.00 in non-sufficient funds fees incurred by the Landlord, for a total amount of \$3,897.50.
- [19] 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 the 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.*

- [20] The Officer finds that the tenancy agreement shall terminate effective 5:00 p.m. on November 21, 2023. The Tenants shall vacate the Residential Property by this time and date.
- [21] The Officer finds that the Tenants shall pay the Landlord in the amount of \$3,897.50, forthwith. The Officer's calculations are as follows:

Item	Amount
Rent: September 1, 2023 – September 30, 2023	\$1,425.00
Rent: October 1, 2023 – October 31, 2023	\$1,425.00
Rent: November 1, 2023 – November 21, 2023 (\$47.50 x 21 days = \$997.50)	\$997.50
Two (2) Non-Sufficient Funds Fees	\$50.00
Total	\$3,897.50

Conclusion

- [22] The Notice is valid and the Application is allowed.
- [23] The tenancy agreement between the parties shall terminate effective **5:00 p.m. on November 21, 2023**. The Tenants shall vacate the Residential Property by this time and date.
- [24] The Tenants shall pay the Landlord \$3,897.50 forthwith.
- [25] **Order LD23-523 was served on the parties by e-mail on November 14, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective **5:00 p.m. on November 21, 2023**. The Tenants shall vacate the Residential Property by this time and date.
- B. The Tenants shall pay the Landlord \$3,897.50 forthwith.
- C. A certified copy of Order LD23-523 may be filed in the Supreme Court and enforced by Sheriff Serviced as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, this 14th 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.