

## Introduction

- [1] On November 21, 2023, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking vacant possession of the rental unit and ordering the Sheriff to put the Landlord into possession of the unit. The Application also requests a monetary order against the Tenant for unpaid rent, which is the subject of Order LD23-580.
- [2] Attached to the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated October 15, 2023, effective November 4, 2023. The Notice was given to the Tenant for the following reason:
- You have not paid your rent in the amount of \$4,300.00 (\$2,150 September and \$2,150 October).*
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [4] On December 5, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Representative for the Landlord participated in the hearing. The Tenant did not participate in the hearing. The Rental Office telephoned the Tenant, left a message, sent an email, and waited ten minutes before proceeding with 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] In January 2023, the Landlord and the Tenant entered into a written month-to-month tenancy agreement for the Residential Property. The Residential Property is one-half of a duplex. Rent is \$2,150.00 due on the first day of the month. A security deposit of \$2,150.00 was required and paid.

### Landlord's Evidence and Submissions

- [6] The Landlord submitted 25 pages of documentary evidence, including written arguments, copies of email exchanges with the Tenant, and copies of bank records.
- [7] The Representative testified that the Tenant owes rent in the amount of \$4,300.00. The Landlord submitted copies of bank records which showed that the Tenant did not pay rent for the months of May 2023 or August 2023. The Landlord credited payments in the following months to the outstanding rent owed in prior months, meaning that the Tenant has not paid rent for the two months of October and November 2023.
- [8] The Landlord submitted copies of email exchanges with the Tenant, in which the Tenant acknowledges owing rent and requests accommodation to make payments.
- [9] The Representative testified that she provided the Tenant with Notice by email on October 15, 2023, with an effective vacate date of November 4, 2023. On November 4, 2023, the Landlord and the Tenant signed an agreement to extend the Tenant's vacate date to December 4, 2023. The Landlord submitted a copy of this agreement into evidence. The Representative testified that as of December 5, 2023, the Tenant still has not vacated the Residential Property.

### Tenant's Evidence and Submissions

- [10] The Tenant did not participate in the hearing or submit any documentary evidence.

## Analysis

[11] The Landlord's reason for terminating the tenancy agreement is pursuant to subsection 60.(1) of the *Act*, which states:

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

*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.*

[12] Further, sub-subsections 51.(4)(b), 60.(5)(a) and (b) 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.*

**85.(1) Powers of the Director**

*After hearing an application the Director may make an order*

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

[13] The Officer finds that based on the merits of this case, and specifically, the copies of the Landlord's bank records and the undisputed testimony of the Representative, the Landlord has established valid grounds for terminating the tenancy agreement for non-payment of rent pursuant to subsection 60.(1) of the *Act*.

[14] The Officer finds that after reviewing the documentary evidence and the testimony provided by the Representative, the Notice was properly served on the Tenant by email on October 15, 2023. Further, the Officer finds that the documentary evidence and testimony of the Representative establishes that the Tenant did not pay the outstanding rent within ten (10) days of receiving the Notice, and the Tenant did not file a *Section 75 Application* (Form 2(A)) with the Rental Office within ten (10) days of receiving the Notice. Therefore, the Tenant is also deemed to have accepted the Notice pursuant to subsection 60.(5) of the *Act*.

[15] Sub-subsection 85.(1)(f) of the *Act* states:

**85. Powers of the Director**

(1) *After hearing an application, the Director may make an order*

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

[16] The Officer finds that the tenancy agreement shall terminate effective 5:00 p.m. on December 15, 2023. The Tenant shall vacate the Residential Property by this time and date.

**Conclusion**

- [17] The Notice is valid and the Application is allowed.
- [18] The tenancy agreement between the parties shall terminate effective **5:00 p.m. on December 15, 2023**. The Tenant shall vacate the Residential Property by this time and date.
- [19] **Order LD23-579 was served on the parties by e-mail on December 8, 2023.**

**IT IS THEREFORE ORDERED THAT**

- A. The tenancy agreement between the parties shall terminate effective **5:00 p.m. on December 15, 2023**. The Tenant shall vacate the Residential Property by this time and date.
- B. A certified copy of Order LD23-579 may be filed in the Supreme Court and enforced by Sheriff Serviced as permitted by the *Act*.

**DATED** at Charlottetown, Prince Edward Island, this 8th day of December, 2023.

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(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.