

Introduction

- [1] On July 25, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the “First Application”) with the Residential Tenancy Office (the “Rental Office”) for the following reasons:

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] The Landlord subsequently withdrew the request for the Tenant to vacate the rental unit when the Tenant vacated the Residential Property on July 31, 2023. The rent owing claim remains.
- [3] On August 11, 2023, the Landlord filed another Landlord Application to Determine Dispute (Form 2B) (the “Second Application”) with the Residential Tenancy Office (the “Rental Office”) seeking to retain the Tenant’s security deposit in partial satisfaction of rent owing.
- [4] The tenancy ended on July 31, 2023. The Landlord served the Tenant the First Application by email on July 25, 2023, and served the Tenant the Second Application by email on August 11, 2023.
- [5] On August 24, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). Two Representatives for the Landlord (“M.P.” and “A.P.”) participated in the hearing. The Tenant did not participate in the hearing. The Officer telephoned the Tenant and emailed the Tenant before proceeding with the hearing.

Issue to be Decided

- i. Does the Tenant owe the Landlord rent?
- ii. Is the Landlord entitled to retain the security deposit?

Summary of the Evidence

- [6] On April 15, 2023, the Landlord and the Tenant entered into a written fixed-term tenancy agreement lasting from April 15, 2023 to July 31, 2023. The Residential Property is a single detached house. Rent was \$1,295.00 due on the first day of the month. A security deposit of \$1,295.00 was required and paid.

Landlord’s Evidence and Submissions

- [7] The Landlord submitted that the Tenant failed to pay for rent, electricity, and heating oil, as required under the tenancy agreement. The Landlord submitted that the Tenant did not pay for the half month of rent owed for moving in on April 15, 2023, and the Tenant did not pay rent for the month of July. The Landlord further submitted that the Tenant did not pay for electricity or heating oil from the beginning of the tenancy to the end of the tenancy, which the Landlord was required to pay.
- [8] The Landlord submitted records of email exchanges with the Tenant. The messages show the Tenant being advised of his failure to pay rent and utilities, and the Tenant agreeing to pay what is owing. The Landlord further submitted records of the electric bills and a heating oil bill for the Residential Property.
- [9] The Landlord submitted a “Tenant Statement” of financial entries showing that the Tenant owes the Landlord a total of \$2,627.72. This represents \$2,075.00 in unpaid rent for half of April and all of July, \$245.89 in unpaid heating oil expenses, and \$306.83 in unpaid electricity expenses.

- [10] P.M. testified that she and A.P. had an in-person meeting with the Tenant during the second week of July to discuss the amounts owing. P.M. testified that the Tenant was fully aware of the outstanding balance.

Tenant's Evidence and Submissions

- [11] The Tenant did not submit any evidence.

Analysis

- [12] The Officer notes the application of the following sections of the Act:

19. Tenant shall pay rent when due

- (1) *A 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.*

40. Return of security deposit

- (1) *Except as provided in subsection (2) or (3), within 15 days after the date the tenancy ends or is assigned, the landlord shall either*
- (a) *issue payment, as provided in subsection (5), of any security deposit to the tenant with interest calculated in accordance with the regulations; or*
 - (b) *make an application to the Director under section 75 claiming against the security deposit.*

Landlord may retain amount from security deposit

- (2) *A landlord may retain from a security deposit an amount that*
- (a) *the Director has previously ordered the tenant to pay to the landlord; and*
 - (b) *remains unpaid at the end of the tenancy.*

Retention by landlord, other circumstances

- (3) *A landlord may retain an amount from a security deposit if*
- (a) *At the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
 - (b) *After the end of the tenancy, the Director orders that the landlord may retain the amount.*

60. 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.*

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.*
 - (j) *determining the disposition of a security deposit, including*
 - (i) *authorizing a tenant to offset, in the manner specified in the order, money a landlord owes to the tenant against money the tenant owes to the landlord, and*
 - (ii) *authorizing a landlord to offset, in the manner specified in the order, money a tenant owes to the landlord against money the landlord owes to the tenant, other than a security deposit where the landlord has not made an application under clause 40(1)(b).*

[13] The Officer notes that in such matters where there is a dispute over a security deposit, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all claims against the security deposit.

[14] The Officer finds that the Landlord has established based on the evidence that the Tenant has failed to pay rent owing to the Landlord. The Officer notes that the Tenant failed to pay for utilities which were his responsibility under the tenancy agreement, and are recoverable by the Landlord as rent owing pursuant to subsection 60.(6) of the Act. The Officer finds that the Tenant owes \$2,627.72 for unpaid rent to the Landlord.

[15] Based on sub-subsection 40.(3)(b) of the Act, the Landlord shall retain the security deposit, in the amount of \$1,295.00, in partial satisfaction of rent owing. The Officer finds that the remaining outstanding rent the Tenant owes the Landlord is \$1,332.72.

Conclusion

[16] The Application is allowed.

[17] The Landlord shall retain the Tenant's security deposit in partial satisfaction of rent owing, in the amount of \$1,295.00.

[18] The Tenant shall pay the Landlord outstanding rent in the amount of \$1,332.72 on or before September 29, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the Tenant's security deposit in partial satisfaction of rent owing, in the amount of \$1,295.00.
- B. The Tenant shall pay the Landlord outstanding rent in the amount of \$1,332.72 on or before September 29, 2023.
- C. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, this 29th day of August, 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 **20** 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.