

## Introduction

- [1] On May 15, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord Application was filed seeking:

*To request an order directing my tenant to pay outstanding rent; and*

*To make claim against the security deposit.*

- [2] On July 5, 2023, the Tenants filed a Tenant Application to Determine Dispute (Form 2A) (the "Tenant Application") with the Rental Office. The Tenant Application was filed seeking:

*To request reimbursement for emergency repairs I personally paid for;*

*To request the return of the security deposit; and*

*Other: Seeking compensation as the landlord evicted us for possession of a family member.*

- [3] On August 30, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants and the Landlord participated. At the beginning of the hearing the Tenants stated they were no longer seeking reimbursement for emergency repairs.

## Issues to be Decided

- i. Do the Tenants owe the Landlord rent?
- ii. Is the Landlord entitled to retain all or part of the security deposit?
- iii. Are the Tenants entitled to compensation for being evicted for possession of a Landlord's family member?

## Summary of the Evidence

- [4] On November 1, 2017, the Tenants and the Landlord entered into a written, fixed-term tenancy agreement for the Residential Property. The Residential Property consists of half of a duplex. Rent was \$890.00 per month due on the first day of the month. A security deposit of \$500.00 was paid. The Tenants vacated on April 30, 2023.

## Landlord's Evidence and Submissions

- [5] The Landlord stated when the Tenants moved out they did not leave the property in a clean state. He stated he had to clean the property as there were cobwebs, mold above a door, and the oven was dirty. He stated there were holes in the walls and other holes were not patched properly. There were also damages to a closet shelf.
- [6] The Landlord stated the Tenants had previously notified him the back door was kicked in while the Tenants were away and the unknown person fixed the door before they returned. He stated the door and door frame are still damaged. The Landlord stated when the Tenants first moved in they signed the rental agreement agreeing to fill the oil tank back to 1/3 full when they left. He stated the tank was empty when they moved out.

- [7] The Landlord stated it will cost \$1,429.95 to fix the door, \$200.00 to repair the walls and shelf, \$150.00 for cleaning, and \$300.00 to replace the oil in the oil tank. The Landlord submitted a copy of an estimate into evidence for the door and wall repair. The Landlord submitted photos of the property and the oil tank gauge into evidence.
- [8] The Landlord stated he served the Tenants a notice of termination on April 1, 2023, effective May 31, 2023, so his son could move into the property. He stated the Tenants told him on April 27, 2023, that they would be vacating on April 30, 2023. The Landlord stated the Tenants did not provide 30-day's notice and the Tenants owe the Landlord \$890.00 in rent for May 2023. He stated his son did not move into the property until June 1, 2023.

### Tenants' Evidence and Submissions

- [9] The Tenants stated the Rental Office's website states that tenants who are evicted for family use can be compensated one month's rent. The Tenants are requesting compensation in the amount of \$890.00 for one month's rent.
- [10] The Tenants stated in 2018 someone broke the door at the property while the Tenants were away and the unknown person fixed the door before they returned. Nothing was stolen and they reported the incident to police. They notified the Landlord but the Landlord did not fix the door and only put some weather stripping on the door.
- [11] The Tenants stated they disagree that the property was dirty when they left. They stated there were minor damages to the property but it should be considered wear and tear. The Tenants submitted videos into evidence of the property before they moved out.
- [12] The Tenants stated they gave short notice that they were moving because they found another place to live for May 1, 2023, and did not want to lose that opportunity. They stated the most recent lease the Tenants signed did not mention filling the oil tank.

### Analysis

#### Rent Owing

- [13] The Landlord stated that the Tenants owe \$890.00 in rent for May 2023 for providing improper notice when the Tenants vacated the Residential Property in April 2023.
- [14] On April 8, 2023, the Executive Council of Prince Edward Island proclaimed the *Act*, and thus repealed the *Rental of Residential Property Act* (the "Former Act"). This means as of April 8, 2023, the current *Act* is the law regarding landlord and tenant disputes on Prince Edward Island.
- [15] The Officer notes that the *Act* has a transitional provision that states, *inter alia*:

*Section 112.(1) - proceedings*

*Any hearing or proceeding that was started under the former Act, but not concluded before the coming into force of this Act, shall be concluded in accordance with the provisions of the former Act as though that Act were still in force.*

- [16] In this case, despite the Landlord Application being filed after April 8, 2023, the Notice was served on the Tenants before proclamation on April 8, 2023. Therefore, the proceeding started under the Former Act and the Officer will apply the *Rental of Residential Property Act* in the hearing regarding this part of the Landlord Application.

- [17] The Landlord's basis for termination of the rental agreement was pursuant to sub-subsection 15.(1)(a) of the Former Act, which states:

*Where the lessor in good faith seeks to*

*(a) have possession of the premises for occupation by himself, his spouse, children or parents, or the parents of his spouse;*

*the lessor may serve the lessee with a notice of termination to be effective not less than two months after it is served.*

- [18] Subsection 15.(3) of the Former Act states:

*(3) Where a lessor serves a lessee notice of termination under this section, the lessee may, at any time during the period of notice*

*(a) give to the lessor at least ten days written notice of a termination date earlier than that specified by the lessor; and*

*(b) pay the lessor, on the date he gives notice of termination under clause (a), the proportionate amount of rent due up to the date the earlier termination is specified to be effective, or, where the rent has been paid in advance, claim and receive from the lessor reimbursement of that proportionate amount.*

- [19] Subsection 15.(3) of the Former Act states that tenants are required to provide a landlord with at least 10-days' notice that they are terminating the rental agreement early after being served an eviction notice under subsection 15.(1)(a). The Tenants provided notice to the Landlord on April 27, 2023, that they were leaving on April 30, 2023, which is only three days' notice.

- [20] The Tenants paid rent until the end of April 2023, so the Officer finds that the Tenants owe the Landlord seven days of rent in the amount of \$204.82, as the end of the tenancy agreement would have been May 7, 2023.

$\$890.00 \times 12 \text{ months} = \$10,680.00 \text{ rent per year}$   
 $\$10,680.00 / 365 \text{ days per year} = \$29.26 \text{ rent per day}$   
 $\$29.26 \times 7 \text{ days} = \$204.82 \text{ rent owing}$

### **Security Deposit**

- [21] The Landlord is seeking to retain the entire security deposit in the amount of \$500.00. The Landlord stated it will cost \$1,429.95 to fix the door, \$200.00 to repair the walls and shelf, \$150.00 for cleaning, and \$300.00 to replace the oil in the oil tank.

- [22] The Officer will make a determination regarding the security deposit in accordance with the Act as Section 110 of the Act states:

*Where a landlord holds a security deposit in accordance with the former Act, the security deposit is deemed to be held in accordance with this Act and the provision of this Act respecting security deposits apply.*

- [23] Subsection 28.(4) of the Act states:

*A tenant of a rental unit shall repair, in a good and professional manner, undue damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

[24] Subsection 28.(5) of the *Act* states:

*A tenant is not required to make repairs for reasonable wear and tear to the rental unit or common areas of the residential property.*

[25] The Tenants stated the door was damaged by an unknown person. The Landlord did not know who damaged the door. Therefore, the Officer finds that the Landlord has not established, on a balance of probabilities, that the damage to the door was caused by the Tenants or by a person permitted on the residential property by the Tenants. Therefore, the Officer is unable to find in the Landlord's favour in this matter.

[26] The Landlord stated it will cost \$300.00 to fill the oil tank back to 1/3 full. The Officer notes that the Landlord has not provided any documentary evidence, such as receipts or invoices, to show that this is the cost to fill the oil tank. Therefore, the Officer is unable to find in the Landlord's favour in this matter.

[27] The Officer does find that the Landlord has established that he had to perform additional cleaning after the Tenants vacated (\$150.00) and that the damage to the Residential Property was not normal wear and tear (\$200.00).

[28] Therefore, the Officer finds that the Landlord has established that he is entitled to retain part of the security deposit in the amount of \$350.00. As the Tenants also owe the Landlord \$284.82 in rent, the remainder of the \$150.00 of the security deposit will be used to offset the rent owing. Therefore, the remainder of the rent owing is \$134.82.

### **Compensation for Eviction**

[29] The Tenants stated they are seeking a return of one month's rent in the amount of \$890.00 because they were evicted so the Landlord's son could move into the Residential Property. Section 72 of the *Act* states:

#### ***Compensation for personal use***

*A landlord shall compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to one month's rent plus reasonable moving expenses in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant.*

[30] The Officer notes that section 72 of the current *Act* only allows a former tenant to apply for compensation if they were evicted under sections 62 or 63 of the *Act*. The Officer notes that the Landlord served the notice pursuant to sub-subsection 15.(1)(a) of the Former *Act*.

[31] In this case, the Tenants were not evicted under any of the sections prescribed and there are no transitional provisions in the *Act* permitting the Tenants to seek such a remedy under the current set of facts. Therefore, the Officer finds that the Tenants are not entitled to a remedy under section 72 of the *Act*.

### **Conclusion**

[32] The Landlord Application is approved in part and the Tenant Application is denied.

[33] The Landlord shall retain the security deposit in the amount of \$500.00.

[34] The Tenants shall pay the Landlord the outstanding rent in the amount of \$134.82 forthwith upon receipt of this Order.

**IT IS THEREFORE ORDERED THAT**

- A. The Landlord shall retain the security deposit in the amount of \$500.00.
- B. The Tenants shall pay the Landlord the outstanding rent in the amount of \$134.82 forthwith upon receipt of this Order.
- 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 12th day of September, 2023.

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(sgd.) Mitchell King  
Mitchell King  
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.