

Introduction

- [1] On May 19, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking:

To request a return of rent due to an unlawful rent increase; and

To request the recovery of overpayment of the security deposit.

- [2] On August 10, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and two Representatives for the Landlord participated.

Preliminary Matter

- [3] At the beginning of the hearing the Tenant also requested that the Officer make a determination if the Tenant was responsible for paying for the oil bill at the Residential Property. This request was not part of the Application. The Officer finds it to be inappropriate and unfair to the parties to make a finding on this question without the appropriate application and time for the parties to submit their evidence and submissions. Therefore, the Officer will not make a determination on the Tenant's question.

Issues to be Decided

- i. Is the Tenant entitled to a return of rent due to an unlawful rent increase?
- ii. Is the Tenant entitled to a recovery of overpayment of the security deposit?

Summary of the Evidence

- [4] On April 1, 2023, the Tenant and the Landlord entered into a written, fixed-term tenancy agreement for the Residential Property. The Residential Property consists of a single townhouse in a four-plex. Rent is \$1,700.00 per month due on the first day of the month. A security deposit of \$1,700.00 was paid.

Tenant's Evidence and Submissions

- [5] The Tenant stated she checked her address on the website My Old Apartment and it listed the previous rent at the Residential Property as \$1,053.00. The Tenant spoke to her neighbour who is in contact with the previous tenant. The previous tenant told the neighbor that they had been paying \$1,053.00 per month for rent and oil was included. The Tenant stated that would mean she is overpaying rent and has overpaid the security deposit.
- [6] The Tenant stated when she was shown the Residential Property before renting it, she thought the heat was electric because of the heat pump, which she agreed to pay for. She asked the person who was showing her the property about the boiler which was in the unit. The person told the Tenant that it was for the "old heat." The Tenant stated there was nothing in the rental agreement about paying for oil. The rental agreement does not include heat so she thought the electric heat was the only source of heat.
- [7] After being in the unit for a short time, the Tenant could smell oil. She called a property representative and they told her that the radiators in the Residential Property run on oil. This representative was a different person than the person who showed her the property. The Tenant observed an oil truck fill her oil tank and her neighbor told her that oil was included in the rent. She was later told by the Landlord that she is responsible for paying for the oil.

Landlord's Evidence and Submissions

- [8] J.D. stated the Tenant is responsible for the oil bill as the rental agreement states that heat is not included in the rent. J.D. stated she did not want to disclose the previous rent for the Residential Property and stated it should be up to the Tenant to prove what the previous rent was. J.D. stated this situation was "totally different especially with the heat part." J.D. stated when the Landlord purchased the property the previous tenants were living in the Residential Property. J.D. stated if the Tenant was not happy then she could leave.
- [9] During the hearing the Officer asked J.D. to provide what the previous rent was for the Residential Property. J.D. stated she did not have the information of what the previous rent was and would check with her accountants. J.D. stated would provide the Officer with a copy of the previous tenant's rental agreement by the end of the week.

Additional Evidence Post-Hearing

- [10] On August 21, 2023, J.D. sent an email to the Officer which stated that the previous landlord did not provide the current Landlord with a copy of the previous rental agreement for the Residential Property. On September 27, 2023, the Director notified the Officer that she had spoken to J.D. on that date and had asked J.D. what the previous rent for the property was. J.D. told the Director that there were two amounts listed for the property; the current rent is \$1,700.00 and the previous rent was \$1,053.43.

Analysis

Return of rent

- [11] Subsections 47.(1) and (2) of *Part 3* the *Act* state:

A landlord shall not increase rent except in accordance with this Part.

The obligations of a landlord under this Part run with the rental unit and not the tenant.

- [12] Subsections 49.(1), and (4) of the *Act* state:

No landlord shall increase the rent charged for a rental unit by more than the allowable annual increase, except in accordance with section 50.

Notwithstanding subsections (2) and (3), the guideline for the 2023 calendar year is zero per cent.

- [13] Subsection 50.(1) of the *Act* states:

A landlord may request the Director's approval of a rent increase in an amount that is greater than the amount calculated under subsection 49(2) by making an application to the Director under section 75.

- [14] Subsection 50.(8) of the *Act* states:

Where a landlord collects a rent increase that does not comply with this Part, the tenant may make an application to the Director under section 75 to recover the amount of the increase.

- [15] The Officer notes that there is no evidence that the Landlord has applied for a greater than allowable rent increase since the last tenant occupied the Residential Property. Furthermore, the allowable rent increase for 2023 is zero percent and the Tenant moved into the Residential Property on April 1, 2023. The Officer notes that the current Tenant should be paying the same rent as the previous tenant, which J.D. stated to the Director was \$1,053.43.
- [16] The Officer therefore finds that the Landlord has collected a rent increase that does not comply with *Part 3* of the *Act* and the Tenant is entitled to recover the amount of the increase totaling \$3,879.42 (\$646.57 x 6 months from April 2023 to September 2023).

Security Deposit

- [17] Subsection 14.(3) of the *Act* states:

A landlord shall not require or accept a security deposit that is greater than

(a) in the case of a tenancy agreement where the rent is paid weekly, the equivalent of one week's rent; and

(b) in any other case, the equivalent of one month's rent.

- [18] Subsection 14.(5) of the *Act* states:

where a landlord receives money or other value from a tenant that exceeds the amount of rent payable in respect of the rental unit, the excess money or value

shall be considered a security deposit; or

Where the excess money or value, as a security deposit, would exceed the amount permitted under subsection (3), shall be considered partial payment of the next rent payment required under the tenancy agreement.

- [19] The Officer notes the Tenant is in a fixed-term tenancy agreement, which would fall under subsection 14.(3)(b) of the *Act*. The Tenant is required to pay a security deposit not greater than one month's rent, which would be no greater than what the previous tenant was paying for rent per month, which J.D. stated was \$1,053.43. The Officer therefore finds that the Tenant has overpaid the security deposit in the amount of \$646.57 (\$1,700.00 - \$1,053.43).
- [20] The Officer further finds that the authorized rent for the Residential Property is \$1,053.43 per month until the rent is properly increased in accordance with the *Act*.

Conclusion

- [21] The Application is allowed.
- [22] The Landlord shall credit the Tenant rent in the amount of \$4,525.99 (\$3,879.42 overpayment of rent and \$646.57 overpayment of security deposit) beginning October 1, 2023.
- [23] The authorized rent for the Residential Property is \$1,053.43 per month until the rent is properly increased in accordance with the *Act*.

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed.
- B. The Landlord shall credit the Tenant rent in the amount of \$4,525.99 (\$3,879.42 overpayment of rent and \$646.57 overpayment of security deposit) beginning October 1, 2023.
- C. The authorized rent for the Residential Property is \$1,053.43 per month until the rent is properly increased in accordance with the Act.

DATED at Charlottetown, Prince Edward Island, this 29th day of September, 2023.

(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.