

## Introduction

- [1] On July 14, 2023 the Landlords filed a *Landlord Application to Determine Dispute* (Form 2B) (the "Landlords' Application") with the Residential Tenancy Office (the "Rental Office") seeking to retain the security deposit.
- [2] The Landlords' Application makes a claim against the security deposit for alleged damage and cleaning the Residential Property.
- [3] On July 26, 2023 the Tenants filed a *Tenant Application to Determine Dispute* (Form 2A) (the "Tenants' Application") with the Rental Office seeking compensation for being evicted for own use.
- [4] The Tenants' Application makes a claim for compensation of 1 months' rent and reasonable moving expenses.
- [5] The Applications and Notices were properly served on the parties.
- [6] On September 14, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants and the Landlords participated in the hearing. The other tenant party to the Tenants' Application did not participate at the hearing, but provided written submissions.

## Issues to be Decided

- i. Are the Landlords entitled to retain the security deposit?
- ii. Are the Tenants entitled to compensation for being evicted?

## Summary of the Evidence

- [7] In October 2019 the Landlords and the Tenants entered into a written fixed term tenancy agreement for the Residential Property. The tenancy agreement included two other tenants; however, one of the tenants is not party to this proceeding and the other is only party to the Tenants' Application. Rent was \$1,550.00 due on the first day of the month. The security deposit was \$1,500.00 (\$375.00 from each of the four tenants). In October 2022, the Landlords requested an additional \$375.00 from the Tenants for the damage deposit for their dogs. The Tenants (two of them) paid the additional \$375.00.
- [8] The Landlords' Application is seeking to claim the Tenants' security deposit (\$750.00) and the additional pet deposit (\$375.00) for a total amount of \$1,125.00. The Landlords returned the other tenants portion of their security deposit (the tenant not party to the proceeding, and the Tenant party to the Tenants' Application). The Tenants vacated the Residential Property in June 2023.

## Landlords' Evidence and Submissions

- [9] With regard to the Landlords' Application, the Landlords testified that the Tenants' dogs caused damaged to the Residential Property's floors which is beyond what they would expect to be normal wear and tear. The Landlords testified that they received a quote for \$3,593.75 to repair the floors. The Landlords' testified that they are only charging or holding the Tenants responsible for 75% of the floor damage and the cost associated with it. The Landlords' testified that to repair and refinish the floors on the second floor would cost \$2,500.00 and another \$250.00 to clean the Residential Property. The Landlords testified that they cleaned the Residential Property themselves and it took approximately two days to clean.

- [10] The Landlords submitted into evidence photographs of the Residential Property which were dated before the Tenants moved in (March 2019) and after the Tenants vacated photographs (July 2023). The Landlords admitted to permitting the dog into the Residential Property, and they permitted a new dog into the Residential Property, but with the condition of the additional deposit being paid.
- [11] With regard to the Tenants' Application, the Landlords testified that they decided in February 2023 that they were going to move into the Residential Property. The Landlords' testified that in March 2023 they texted the Tenants of their intention to move into the Residential Property. The Landlords testified that they did not serve the Tenants with any eviction notice or Form 4. The Landlord's testified that they could not find the Form on the Rental website. The Landlords testified that they only texted the Tenants and provided them with four months' notice. The Landlords testified that they did provide a homemade notice of termination to the Tenants on May 1, 2023 with an effective date of July 31, 2023. At the end of June 2023 the Tenants all vacated the Residential Property without dispute.
- [12] With regard to the Tenants' Application, the Landlords' responded to the Tenant's written submission (see below) who did not participate at the hearing, as follows. The Landlords' testified that they believed that they followed the *Act* providing four months' notice, and that they believe three days off work is excessive and they should not be responsible for that expense.

#### **Tenants' Evidence and Submissions**

- [13] With regard to the Landlords' Application, the Tenants testified that there were many mats in the Residential Property, which would have covered some of the damage during the inspection with the Landlords. The Tenants testified that the quote provided by the Landlords is for a full replacement of the upstairs floor—not just the damaged areas. The Tenants testified that the dog did cause some damage to the floor. However, they lived in the Residential Property since 2019 so normal wear and tear will exist on the floors.
- [14] The Tenants testified that they cleaned the Residential Property, but admitted that they forgot to clean underneath the appliances.
- [15] With regard to the Tenants' Application, the Tenants testified that they received a text message from the Landlords stating that they wanted to move into the Residential Property. The Tenants testified that they did not receive an eviction notice or any formal Form from the Landlords. The Tenants admitted to not disputing the Landlords' request and that all the Tenants vacated the Residential Property in June 2023.
- [16] The Tenants testified that because they were evicted due to "own use" they are entitled to one months' rent and reasonable moving expenses as compensation. The Tenants referenced section 72 of the *Act*. The Tenants' testified that they are seeking \$750.00 in compensation for rent and \$300.00 in moving and storage expenses, totaling \$1,050.00.
- [17] The other tenant who did not participate in the hearing, but provided written submissions, their submissions are as follows. The Tenant is seeking \$383.75 in return of rent and \$699.30 in moving expenses and hourly wages lost as a result of moving, totaling \$1,083.05. The Tenant references section 72 and 73 of the *Act*. The Tenant argued that he only received his portion of the security deposit and not the compensation he is entitled to under section 72 of the *Act*. The Tenant provided additional submissions as it relates to the Landlords' Application and the alleged damaged floors.

## Analysis

### **With regard to Issue i: *Are the Landlords entitled to retain the security deposit?***

[18] The Officer notes that subsections 40.(1) of the *Act* states:

#### ***Return of security deposit***

*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.*

[19] Further, the Officer notes that relevant to the Landlords' Application are sub-subsections 28.(3)(a), (b), and subsections (4) and (5) of the *Act* which state:

#### ***Tenant responsible for ordinary cleanliness***

*A tenant is responsible for*

- (a) Ordinary cleanliness of the rental unit and all areas of the residential property used exclusively by the tenant, except to the extent that the tenancy agreement expressly requires the landlord to clean it; and*
- (b) Proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.*

#### ***Tenant responsible for undue damage***

*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.*

#### ***Tenant not responsible for reasonable wear and tear***

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

[20] The Officer makes comment 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 made against the security deposit.

[21] The Officer finds that after reviewing the documentary evidence and hearing the testimony of the parties in its totality, that the Landlords' have established their claim against the security deposit. The Officer finds that the photographs submitted into evidence, along with hearing the testimony of the parties provides sufficient evidence to conclude that the Tenants' dog caused damage to the Residential Property floors, which the Officer finds is beyond normal wear and tear.

- [22] The Officer notes that the Tenants' made arguments that did not outright deny causal damage, however, suggested it is difficult to attribute the amount of damage caused when weighed against normal wear and tear. The Officer finds that this is a fair argument by the Tenants, however, the Landlords' submission and claim reflects an apportion (75%) of the damage attributed to the Tenants' dog. The Officer finds and accepts the Landlords' submissions as a reasonable amount to attribute based on the evidence submitted. The Officer finds that the Landlords are entitled to retain \$750.00 from the security deposit.
- [23] The Officer turns to the outstanding \$375.00 which the Landlords collected from the Tenants in October 2022. The Officer finds that the evidence and testimony concludes that this was an additional payment agreed upon by the parties as a result of the Tenants' getting a new dog. The Officer finds that the Landlords were not entitled to ask for this amount, and despite the parties agreeing to this additional provision, the Officer finds it unenforceable. The Officer notes that sub-sections 14.(3)(a), and (b) of the *Act* and section 15 of the *Act* state:

***Limits on amount of security deposit***

*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.*

***Prohibitions respecting security deposit***

*A landlord shall not*

- (a) require a security deposit at any time other than when the landlord and tenant enter into a tenancy agreement;*
- (b) require or accept more than one security deposit in respect of a tenancy agreement; or*
- (c) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement.*

- [24] Further, the Officer makes comment that with reference to finding the additional provision unenforceable despite the parties agreeing, section 5 of the *Act* states:

***This Act cannot be avoided***

*Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.*

- [25] Therefore, the Officer finds that the Landlords shall return the \$375.00 to the Tenants forthwith.

**With regard to Issue ii: Are the Tenants entitled to compensation for being evicted?**

- [26] The Officer notes that sections 72 and 73 of the *Act* and subsection 6.(1) of the *Residential Tenancy Regulations* (the "Regulations") state:

***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 the 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.*

***Timing of compensation***

*Where the landlord is required to compensate a tenant under section 70, 71 or 72, the landlord shall compensate the tenant no later than the termination date specified in the notice of termination of the tenancy given by the landlord.*

***Reasonable moving expenses***

*For the purposes of subsection 70(1) and (2) and sections 71 and 72 of the Act, reasonable moving expenses are the lesser of the actual expenses of the move or one month's rent.*

- [27] The Officer finds that after reviewing the documentary evidence and hearing the testimony of the parties that the Landlords did not serve the Tenants with the proper and required Notice of Termination (Form 4B). However, the Officer notes that the Landlords did serve the Tenants a homemade notice of termination. The Officer refers to section 30 of the *Interpretation Act* which states:

***Effect of deviation from specified form***

*Where an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if*

- (a) the deviations do not affect the substance;*
- (b) the deviations are not likely to mislead; and*
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.*

- [28] The Officer finds that the Landlords served this homemade notice of termination and the Tenants were aware of the reason for the termination, and were provided an effective date. The Tenants did not dispute this notice of termination and vacated. The Officer finds that the reason for the termination was own use. Therefore, the Officer finds that the Tenants are entitled to compensation under section 72 of the *Act*.

- [29] With regard to compensation the Officer finds that the Tenants are entitled to one months' rent in the total amount of \$1,133.75 (\$375.00 + \$375.00 + \$383.75).

- [30] With regard to compensation the Officer finds that the Tenants are also entitled to reasonable moving expenses. The Officer notes that the Tenants who testified at the hearing are requesting \$300.00 in moving and storage expenses. The Officer notes that the Tenants did not provide any documentary evidence to substantiate this amount requested. However, based on the testimony provided by the Tenants, and that the amount requested is less than one months' rent, the Officer finds that \$300.00 is reasonable in this case.
- [31] The Tenant who did not provide any testimony at the hearing, but provided written submissions is requesting \$699.30 in moving expenses. The Officer finds that section 6.(1) of the *Regulations* requires that it is the lesser of the actual expenses and one months' rent. Therefore, the Officer finds that the Tenant is entitled to \$383.75 in moving expenses in this case. In total, the Landlords shall pay the Tenants \$683.75 in moving expenses.

**Conclusion**

- [32] The Landlords' Application is allowed, in part.
- [33] The Landlords are entitled to retain \$750.00 from the security deposit.
- [34] The Landlords shall return \$375.00 from the security deposit to the Tenants, forthwith.
- [35] The Tenants' Application is allowed.
- [36] The Landlords shall pay the Tenants \$1,817.50 in compensation, forthwith.

**IT IS THEREFORE ORDERED THAT**

- A. The Landlords are entitled to retain \$750.00 from the security deposit.
- B. The Landlords shall return \$375.00 from the security deposit to the Tenants, forthwith.
- C. The Landlords shall pay the Tenants \$1,817.50 in compensation, forthwith.

**DATED** at Charlottetown, Prince Edward Island, this 28th day of September, 2023.

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(sgd.) Cody Burke  
Cody Burke  
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.