

Introduction

- [1] On July 14, 2023, the Landlords filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking:

To make a claim against the security deposit; and

Other: Retain full security deposit as tenants did not provide written notice to end their tenancy.

- [2] On September 26, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants, a Landlord, and a Landlord witness participated.

Issue to be Decided

- i. Are the Landlords entitled to retain part or all of the security deposit?

Summary of the Evidence

- [3] On July 12, 2022, the Tenants and the Landlords entered into a written, fixed-term tenancy agreement for the Residential Property from September 1, 2022, to June 30, 2023. The Residential Property consists of a single-family house. Rent was \$1,800.00 per month due on the first day of the month. A security deposit of \$1,800.00 was paid. The Tenants vacated the Residential Property on June 30, 2023.

Landlord's Evidence and Submissions

- [4] The Landlord stated on April 13, 2023, the Tenants requested to extend the tenancy agreement until July 31, 2023. She stated she had a verbal conversation with V.S. on a later date and told V.S. the Tenants could stay until July 31, 2023. The parties also had a conversation on May 15, 2023, about the Tenants staying until July 31, 2023. She stated at that time V.S. never told her that the Tenants may be leaving at the end of June. The Landlord submitted a copy of the text messages between the Tenants and Landlord from April 13, 2023.
- [5] The Landlord stated new tenants were secured for August 1, 2023, as she thought the Tenants were staying until July 31, 2023. On June 16, 2023, the Tenants notified the Landlord they were ending the tenancy agreement on June 30, 2023. The Tenants vacated the Residential Property on June 30, 2023, and returned the keys on July 2, 2023. The Landlord stated she never agreed to allow the Tenants to end the tenancy at the end of June 2023 and they owe rent for July 2023.
- [6] The Landlord stated the tenancy agreement states that the Tenants were required to provide at least 60-days' notice if they were breaking the fixed term. She stated that would have been before April 30, 2023, if they were leaving on June 30, 2023. She stated any time she spoke to the Tenants about staying until the end of July, the Tenants never advised that they would be leaving at the end of June. The Landlord stated she was unable to rent the property during July 2023 as she had secured new tenants beginning August 2023. She is requesting to keep the security deposit for rent for July 2023.

Tenants' Evidence and Submissions

- [7] J.M. stated their written lease was supposed to end on June 30, 2023. He stated on April 13, 2023, the Tenants asked the Landlord about extending the lease until the end of July 2023 but the Landlord did not confirm if they could or not. J.M. stated because the Landlord did not confirm if the lease could be extended then he said that the April 13, 2023, message was the Tenant's notice, which was more than 60 days.
- [8] J.M. stated the Tenants moved out on June 30, 2023, and met the Landlord for a walkthrough on July 2, 2023. At that time the Landlord stated she did not see any reason to keep the security deposit. After the Tenants had moved out, the Landlord wanted the Tenants to sign some forms to sign off on the rental agreement. The parties were not able to meet to sign the forms. He stated the Landlord said she would keep the security deposit if they did not sign the forms.
- [9] J.M. stated section 51.(3) of the *Act* states that parties can make an agreement other than the tenancy agreement to end a tenancy. He stated in a June 18, 2023, email exchange between the parties the Landlord agreed to end the tenancy agreement on June 30, 2023. A copy of the email exchange was submitted into evidence.
- [10] V.S. stated an email exchange between the parties on June 23, 2023, also show that the Landlord confirmed that the Tenants would be leaving in seven days. A copy of the email exchange was submitted into evidence.

Analysis

- [11] The Landlords are seeking to retain the security deposit in the amount of \$1,800.00 for rent owing for July 2023 because the Tenants did not provide proper notice to end their tenancy agreement pursuant to subsection 40.(2)(b) of the *Act* which states:

Landlord may retain amount from security deposit

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.*

- [12] The parties agreed that on April 13, 2023, the Tenants requested to extend the tenancy agreement until the end of July 2023. The Landlord stated she verbally notified V.S. sometime after April 13, 2023, that the tenancy agreement would be extended until July 31, 2023, and again on May 15, 2023. The Tenants stated the Landlord never confirmed the extension and they considered June 30, 2023, as the end of the tenancy agreement.
- [13] The Tenants also stated email exchanges between the parties show that the Landlord agreed to allow the Tenants to end the tenancy agreement on June 30, 2023, pursuant to subsection 51.(3) of the *Act* which states:

A landlord and a tenant may make a written agreement, other than a tenancy agreement, to end a tenancy.

- [14] The Officer notes that in a message to the Tenants on June 18, 2023, the Landlord thanked the Tenants for letting her know that the Tenants "*had changed your mind about ending your tenancy on July 31st.*" In a message to the Tenants on June 21, 2023, the Landlord thanked the Tenants for letting her know that they "*will be moving out in two weeks on June 30th instead of July 31st that you had originally advised.*"

- [15] After reviewing the evidence and testimony submitted by the parties, the Officer does not find that the Landlord agreed to end the tenancy on June 30, 2023, or that the parties made a written agreement, other than a tenancy agreement, to end the tenancy agreement on June 30, 2023. Furthermore, the Officer finds that the evidence suggests that the parties had agreed to extend the tenancy agreement until July 31, 2023, and the Landlord secured a new tenant for August 1, 2023.
- [16] Both parties submitted that 60-days' notice was required to end the fixed term tenancy agreement. The Landlord stated 60-days' notice was not provided and notice was only provided on June 16, 2023, and the Tenants vacated on June 30, 2023. The Tenants stated they provided notice on April 13, 2023, which was more than 60 days.
- [17] The Officer notes that 60-days' notice was required under the *Rental of Residential Property Act* (the "former Act") to end a fixed-term tenancy agreement. However, on April 8, 2023, the former Act was repealed and the current Act came into force. Therefore, any notice given after April 8, 2023, would be under the current Act. With regards to the required notice for a fixed-term tenancy agreement subsection 55.(3) of the current Act states:
- (3) A tenant may end a fixed-term tenancy by giving the landlord a notice of termination effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice;
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and
- (c) is the day before the day that rent is payable under the tenancy agreement.
- [18] Subsection 55.(3)(a) of the Act states that a Tenant is required to provide the Landlord at least one month's notice when terminating a fixed-term tenancy agreement. The Officer does not agree with the Tenant's submission that their text message from April 13, 2023, was a notice of termination. The Officer notes that the Tenants did advise the Landlords on June 16, 2023, that they would be vacating on June 30, 2023, which is less than one month's notice. Furthermore, subsection 55.(3)(b) of the Act states the termination date cannot be earlier than the end date of the tenancy agreement, which was July 31, 2023.
- [19] The Officer finds that the Landlords have established that the Tenants failed to provide proper notice when ending their fixed-term tenancy agreement. The Landlords had new tenants secured for August 1, 2023, and they were unable to re-rent the property for July 2023. The Landlords are therefore entitled to retain the security deposit in the amount of \$1,800.00 for rent for July 2023.

Conclusion

- [20] The Application is allowed.
- [21] The Landlords may retain the security deposit in the amount of \$1,800.00 for rent for July 2023.

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed.
- B. The Landlords may retain the security deposit in the amount of \$1,800.00 for rent for July 2023.

DATED at Charlottetown, Prince Edward Island, this 28th 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.