

Introduction

- [1] On June 26, 2023 the Subtenant filed a *Tenant Application to Determine Dispute* (Form 2A) (the "Application") dated June 14, 2023, with the Residential Tenancy Office (the "Rental Office") seeking a return of the security deposit.
- [2] The Application and Notices were properly served on the parties.
- [3] On September 21, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Subtenant participated and a representative for the Landlord participated.

Issue to be Decided

- i. Is the Subtenant entitled to a return of the security deposit?

Summary of the Evidence

- [4] What is undisputed is that the Residential Property is a 3-unit building attached to a commercial building. Rent for the Residential Property was \$1,500.00 and a security deposit of \$1,500.00 was required and paid. The Landlord purchased the Residential Property on April 22, 2022.

Landlord's Evidence and Submissions

- [5] G.K. testified that in April 2022, when the Landlord purchased the Residential Property, he was not aware that the Subtenant was living in the rental unit with the tenant. G.K. testified that the tenant paid the rent each month. The Landlord submitted into evidence a copy of the Statement of Adjustments, which showed the security deposit of \$1,500.00 for the rental unit. G.K. testified that he only became aware of the Subtenant in September 2022. G.K. testified that the Subtenant had an agreement with the tenant and not with the Landlord and not with the former landlord.
- [6] G.K. testified that the tenant passed away in April 2023. After the tenant's passing, the Landlord requested the Subtenant vacate the Residential Property, which he did on May 8, 2023. G.K. testified that he only has contact information for the tenant, and the tenant's estate has not reached out. G.K. testified that the tenant is not a Canadian citizen so it is unclear what the current situation is with the estate and the tenant's affairs.
- [7] G.K. testified that the Subtenant is not understanding the law. The Landlord cannot give the tenant's security deposit to the Subtenant. Further, the Subtenant does not have any agreement with the Landlord.

Subtenant's Evidence and Submissions

- [8] The Subtenant testified that he moved into the Residential Property in January 2021 with the tenant. The Subtenant testified that the former landlord was aware that he moved into the Residential Property. The Subtenant testified that he had a verbal month to month agreement with the tenant, and with the former landlord. The Subtenant testified that he paid half the rent to the tenant each month and paid \$750.00 (half) of the security deposit to the tenant.
- [9] The Subtenant testified that the Landlord was aware he was living in the Residential Property. The Subtenant testified that in February 2023 he texted an employee of the Landlord asking about having the tenancy agreement in writing. The Subtenant testified that nothing was ever signed.
- [10] The Subtenant testified that he has not spoken to the tenant's estate. The Subtenant testified that the Landlord had 15 days to apply to retain his and the tenant's security deposit.

Analysis

- [11] The Officer notes that generally in security deposit disputes, subsection 40.(1) of the *Act* applies. However, in this case, the Officer finds that the evidence and testimony of the parties establishes that there is no privity of contract between the parties. That means there is no tenancy agreement between the Subtenant and the Landlord.
- [12] The Officer finds that the Subtenant entered into a verbal tenancy agreement with the tenant, the Subtenant moved into the Residential Property, paid half the rent and half the security deposit to the tenant. The tenant paid the former landlord the rent, and then the Landlord. The evidence does not suggest and does not establish that the Subtenant had a tenancy agreement with the former landlord, notwithstanding the former landlord being aware the Subtenant resided in the rental unit. The evidence suggests that when the Landlord purchased the Residential Property, the tenant was the only one who had a tenancy agreement with the former landlord and now the Landlord. The Subtenant only had a tenancy agreement with the tenant. Therefore, the Officer finds that the Subtenant cannot make an application against the Landlord for the security deposit as the Subtenant has no tenancy agreement with the Landlord. The Application is denied.

Conclusion

- [13] The Application is denied.

IT IS THEREFORE ORDERED THAT

- A. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 4th day of October, 2023.

(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.