

Introduction

- [1] On June 29, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2B) (the “Application”) with the Residential Tenancy Office (the “Rental Office”), seeking the following remedies.

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

To request my tenant vacate the rental unit and ordering the Sheriff to put me into possession of the rental unit.

- [2] The Landlord later advised that the Tenant had vacated the rental unit and is no longer seeking an order for the tenant to vacate the rental unit.
- [3] Attached to the Application was an Eviction Notice (Form 4A) dated June 6, 2023, effective June 25, 2023 (the “Notice”). The Notice was served on the Tenant for the following reason:

You have not paid your rent in the amount of \$3,160.80.

- [4] On July 12, 2023, the Landlord filed another *Landlord Application to Determine Dispute* (Form 2B) (the “Second Application”) with the Rental Office seeking to retain the Tenant’s security deposit in partial satisfaction of rent owing, pursuant to sub-subsection 85.(1)(j) of the *Act*.
- [5] The Notice and Applications were served on the Tenant by email.
- [6] On September 28, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). A representative for the Landlord (the “Representative”) participated in the hearing. The Tenant did not participate in the hearing. The Rental Office attempted to telephone the Tenant and sent an email to the Tenant before proceeding with the hearing.

Issue to be Decided

- i. Does the Tenant owe rent to the Landlord?
- ii. Is the Landlord entitled to retain the security deposit?

Summary of the Evidence

- [7] On April 10, 2023, the Landlord and the Tenant entered into a written month-to-month tenancy agreement for the Residential Property. Rent was \$1,400.00 due on the first day of the month. The Residential Property was a motel unit. A security deposit of \$1,100.00 was required and paid.

Landlord’s Evidence and Submissions

- [8] The Landlord submitted that the Tenant has not paid rent for the months of May and June 2023, as well as a portion of the rent for the month of April 2023. The Landlord testified that at the beginning of the tenancy, the Tenant was charged a pro-rated rent for the month of April 2023 in the amount of \$880.00, of which he has only paid \$600.00. The Representative testified that the Tenant has not made any rent payments for the months of May and June of 2023. The Representative testified that the Tenant vacated the rental unit at some point in June 2023.

- [9] The Representative testified that the Tenant owes \$3,080.00 in rent owing, consisting of \$280.00 for April 2023, and \$1400.00 each for May and June 2023. The Representative submitted a rental ledger for the Tenant's account showing a balance of \$3,160.80. The Representative testified that they originally sought rent owing in the amount of \$3,160.80, which took into account a one-percent "late fee" of \$80.80. The Representative testified that the Landlord is only seeking \$3,080.00 and is not pursuing recovery of a "late fee".

Tenant's Evidence and Submissions

- [10] The Tenant did not submit any evidence.

Analysis

Rent Owning

- [11] The Officer notes that the Landlord is seeking an order directing payment of rent for the months of April, May, and June of 2023, pursuant to sub-subsection 85.(1)(b) of the *Act* which states:

85. Powers of the Director

(1) *After hearing an application, the Director may make an order*

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord.

- [12] The Officer finds that based on the undisputed evidence of the Landlord, the Tenant has failed to pay rent owing to the Landlord. The Officer finds that the Tenant owes \$3,080.00 in rent for the months of April, May, and June of 2023. The Officer notes that the Tenant is not permitted to withhold rent unless the Tenant has an express right under the *Act* to deduct or withhold all or a portion of the rent.

- [13] The Officer's calculations are as follows:

- \$280.00 outstanding for April 2023 rent;
- \$1,400.00 outstanding for May 2023 rent; and
- \$1,400.00 outstanding for June 2023 rent.

- [14] The Officer finds that the Tenant owes the Landlord \$3,080.00 in rental arrears.

Determination of Security Deposit

- [15] The following subsections of the *Act* state:

85. Powers of the Director

(1) *After hearing an application, the Director may make an order*

(j) *determining the disposition of a security deposit, including*

- (i) *authorizing a tenant to offset, in the manner specified in the order, money a landlord owes to the tenant against money the tenant owes to the landlord, and*
- (ii) *authorizing a landlord to offset, in the manner specified in the order, money a tenant owes to the landlord against money the landlord owes to the tenant, other than a security deposit where the landlord has not made an application under clause 40(1)(b);*

40. Landlord may retain amount from security deposit

(3) *A landlord may retain an amount from a security deposit if*

(b) *after the end of the tenancy, the Director orders that the landlord may retain the amount.*

[16] The Officer finds that the Landlord shall retain the security deposit in the amount of \$1,100.00 in partial satisfaction of rent owing, pursuant to sub-subsection 40.(3)(b) of the *Act*.

Conclusion

[17] The Applications are allowed.

[18] The Landlord shall retain the security deposit in the amount of \$1,100.00.

[19] The Tenant shall pay the Landlord \$1,980.00 forthwith.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain the security deposit in the amount of \$1,100.00.

B. The Tenant shall pay the Landlord \$1,980.00 forthwith.

DATED at Charlottetown, Prince Edward Island, this 5th day of October, 2023.

(sgd.) Colin Trewin

Colin Trewin
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.