

Introduction

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

To make a claim against the security deposit (the "Security Deposit Application"); and

To request an order directing my tenant to pay outstanding rent (the "Rent Owing Application").

- [2] On October 3, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a Tenant witness, the Landlord, and a Landlord witness participated. All documents were properly served on the parties.

Issues to be Decided

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

Summary of the Evidence

- [3] On August 1, 2016, the Tenant and the Landlord entered into a written, fixed-term tenancy agreement for the Residential Property. For the past two years the tenancy agreement had been a verbal month-to-month agreement. The Residential Property consists of one half of a duplex. Rent was \$1,080.00 per month due on the first day of the month. A security deposit of \$500.00 was paid. The Tenant vacated the Residential Property on July 2, 2023.

Landlord's Evidence and Submissions

- [4] The Landlord stated on June 20, 2023, the rent for June 2023 had not been fully paid and the Tenant still owed \$780.00. The Landlord served the Tenant with an eviction notice on the Tenant's door because he wanted her to pay the rent and she had not been communicating with him. He stated he did not want to evict her but wanted the rent paid. He stated that the Tenant vacated the property on July 2, 2023, without providing him proper notice. He stated he is seeking rent owing of \$1,080.00 for July 2023, because the Tenant did not provide one month's notice and because he was not able to rent the property until October 1, 2023, because of repairs he had to take care of due to the Tenant.
- [5] The Landlord submitted copies of bank statements into evidence. The statements showed the Tenant paid \$300.00 on June 12, 2023, \$300.00 on June 23, 2023, and \$480.00 on July 7, 2023. The Landlord stated the Tenant has paid rent in full for June 2023.
- [6] The Landlord stated after the Tenant left, he found he had to complete several repairs at the Residential Property. He stated it cost over \$4,000.00 to repair items such as the carpet, broken tile, hardwood floors, and for painting. The Landlord submitted copies of receipts into evidence as well as before and after photographs of the Residential Property. He stated that the \$500.00 security deposit will not cover all the damages.

Tenant's Evidence and Submissions

- [7] The Tenant stated she had been looking for somewhere else to live and was planning on leaving by August of 2023. She stated the Landlord had attended the residence on June 21, 2023, and asked A.M. if the Tenant was planning on moving, as the Tenant had a dump trailer outside and was cleaning the residence. She stated the next day she received the eviction notice. The Tenant stated that she decided to vacate pursuant to the eviction notice. She stated she left on June 2, 2023, and notified the Landlord on that date that she had left. The vacate date on the eviction notice was July 10, 2023.
- [8] The Tenant agreed during the hearing that the Landlord could keep the entire security deposit of \$500.00. The Tenant stated she does not believe she owes rent for July 2023 as she was evicted by the Landlord.

Analysis

Issue i: Security Deposit

- [9] During the hearing the Tenant agreed that the Landlord could retain the security deposit. The Officer accepts the Tenant's submission and finds that the Landlord may retain the security deposit in the amount of \$500.00 and the Security Deposit Application is allowed.

Issue ii: Rent Owing

- [10] The Landlord is requesting rent owing for July 2023 as he stated the Tenant did not provide 30-days' notice that she was vacating the Residential Property. The Landlord stated he did not want to evict the Tenant but only wanted the Tenant to pay the rent. The Officer notes that an eviction notice is not the same as a "warning" and if an eviction notice is served on a tenant, then section 60 of the Act applies:

60.(1) A landlord may end a tenancy if rent is unpaid after the day it is due, by giving a notice of termination effective on a date that is not earlier than 20 days after the date the tenant receives the notice.

60.(4) Within 10 days after receiving a notice of termination under this section, the tenant may

(a) pay the overdue rent, in which case the notice of termination has no effect; or

(b) dispute the notice of termination by making an application to the Director under section 75.

60.(5) Where a tenant who has received a notice of termination under this section does not pay the rent or make an application to the Director in accordance with subsection (4), the tenant

(a) is deemed to have accepted that the tenancy ends on the effective date of the notice of termination; and

(b) shall vacate the rental unit by that date.

- [11] The parties agreed the Tenant had vacated the Residential Property on July 2, 2023, which was **before** the July 10, 2023, vacate date as stated on the Notice. Therefore, the Officer finds that the Tenant vacated the Residential Property pursuant to the Notice and subsection 60.(5)(b) of the Act.

[12] With regards to rent owing by the Tenant, subsection 74.(1) of the *Act* states:

A landlord is entitled to compensation for a former tenant's use and occupation of the rental unit after the tenancy has been terminated.

[13] As the Tenant used and occupied the Residential Property from July 1, 2023, to July 2, 2023, the Officer finds that the Tenant owes the Landlord two days of rent in the amount of \$71.00, calculated as:

\$1,080.00 rent per month x 12 months = \$12,960.00 rent per year
\$12,960.00 rent per year / 365 days per year = \$35.50 rent per day
\$35.50 rent per day x 2 days = \$71.00 rent owing

Conclusion

[14] The Security Deposit Application is allowed and the Rent Owing Application is allowed in part.

[15] The Landlord may retain the security deposit in the amount of \$500.00.

[16] The Tenant shall pay the Landlord the outstanding rent in the amount of \$71.00 forthwith upon receipt of this Order.

IT IS THEREFORE ORDERED THAT

- A. The Landlord may retain the security deposit in the amount of \$500.00.
- B. The Tenant shall pay the Landlord the outstanding rent in the amount of \$71.00 forthwith upon receipt of this Order.
- C. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 10th day of October, 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.