

Introduction

- [1] On July 26, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking:

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

To make a claim against the security deposit.

- [2] On September 26, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord participated and the Tenant did not participate in the hearing. All documents were properly served on the parties.

Issues to be Decided

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

Summary of the Evidence

- [3] On March 1, 2023, the Tenant and the Landlord entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property consists of a single unit in a triplex. Rent was \$1,850.00 per month due on the first day of the month. A security deposit of \$1,850.00 was paid. The Tenant vacated the Residential Property around July 6, 2023.

Landlord's Evidence and Submissions

- [4] The Landlord stated she emailed the Tenant on July 3, 2023, that there was \$850.00 rent owing for July 2023. She was then notified by a neighbour that the Tenant may have vacated the Residential Property. She posted a 24-hour inspection notice on the door of the Residential Property on July 5, 2023, and entered on July 6, 2023. On July 6, 2023, the Landlord found that the Tenant had vacated the Residential Property.
- [5] The Landlord stated the Tenant left personal property behind in the Residential Property. On July 11, 2023, the Landlord sent a text to the Tenant asking permission to dispose of the property. The Tenant provided permission to dispose of the property. The Landlord stated it cost \$621.00 in labour to deal with the Tenant's property as there were 88 bags of garbage and 7 mattresses which had to be disposed of. The Landlord then had to pay another \$700.00 to clean the property and she stated there was still a smell in the unit after cleaning. The Landlord stated she was not able to re-rent the property for another six weeks because of the smell. She stated she had not even added in the dump fees.
- [6] The Landlord submitted into evidence copies of text messages from the Tenant from June 1, 2023, in which the Tenant stated she would be vacating by June 30, 2023. The Tenant asked the Landlord if the security deposit could be used for last month's rent. The Landlord stated the security deposit had to be retained for any damage and cleaning.
- [7] The Landlord submitted a copy of the text message in which the Tenant gave permission for the Landlord to dispose of her personal property. The Landlord submitted photographs of the personal property left behind by the Tenant and the garbage which had to be disposed of. The Landlord stated she is not seeking any rent owing above what is covered in the security deposit.

Tenant's Evidence and Submissions

[8] The Tenant did not submit any evidence or participate in the hearing.

Analysis**Issue i: Rent Owing**

[9] The Landlord is seeking an order directing the Tenant to pay \$850.00 in outstanding rent for July 2023, as the Tenant vacated the Residential Property around July 6, 2023, without notifying the Landlord. The Tenant only paid \$1,000.00 of the \$1,850.00 rent for July 2023.

[10] Subsection 19. (1) of the Act states:

A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.

[11] Subsection 55.(3) of the 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.

[12] 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. 55.(3)(b) of the Act states the tenancy cannot end earlier than the end date of the fixed term. The fixed-term tenancy agreement was not set to expire until March 20, 2024, therefore the Tenant would be required to provide notice prior to February 20, 2024. The Officer notes that the Tenant vacated the Residential Property around July 6, 2023, without advising the Landlord.

[13] The Officer finds that the Landlord has established that the Tenant did not provide the Landlord proper notice as specified in subsection 55.(3) of the Act. The Officer further finds that the Tenant did not pay \$850.00 in rent for July 2023 as required by subsection 19.(1) of the Act and the Tenant owes the Landlord \$850.00 in rent.

Issue ii: Security Deposit

[14] The Landlord is seeking to retain the full security deposit in the amount of \$1,850.00 for unpaid rent and for cleaning after the Tenant had vacated the Residential Property. Section 40 of the Act states:

Return of security deposit

(1) 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.*

Landlord may retain amount from security deposit

(2) *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.*

Retention by landlord, other circumstances

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

- (a) *At the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
(b) *After the end of the tenancy, the Director orders that the landlord may retain the amount.*

- [15] The Landlord stated it cost \$621.00 for labour to dispose of the items left behind by the Tenant and \$700.00 to clean the Residential Property, totaling \$1,321.00. The Officer has already found that the Tenant owes \$850.00 in rent for July 2023. The Landlord stated she is not seeking any rent owing above what is covered in the security deposit. Therefore, the Officer finds that the Landlord may retain the security deposit in the amount of \$1,850.00 for cleaning (\$1,321.00) and partial rent owing (\$529.00).

Conclusion

- [16] The Application is allowed.

- [17] The Landlord shall retain the security deposit in the amount of \$1,850.00.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the security deposit in the amount of \$1,850.00.

DATED at Charlottetown, Prince Edward Island, this 13th 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.