

Introduction

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

To request a recovery of the overpayment of the security deposit.

- [2] On August 14, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer") on related matters. This matter was heard on October 12, 2023. The Tenants and the Landlord E.P. participated. All documents were properly served on the parties.

Issue to be Decided

- i. Are the Tenants entitled to a recovery of the overpayment of the security deposit?

Summary of the Evidence

- [3] In February of 2023, the Tenants and the Landlords entered into a written, fixed-term tenancy agreement for the Residential Property. The Residential Property is situated in a single-family house. Rent is \$1,500.00 per month due on the first day of the month. A security deposit of \$500.00 was paid.

Tenants' Evidence and Submissions

- [4] M.G. stated the Landlords collected first and last month's rent (\$1,500.00 x 2) as well as the security deposit (\$500.00) when the tenancy agreement was entered into. The first \$1,500.00 was paid on February 13, 2023, to secure the house. The \$500.00 security deposit was paid on February 19, 2023. First month's rent of \$1,500.00 was paid on March 1, 2023. Copies of the e-transfers were submitted into evidence.
- [5] M.G. stated he did not realize the Landlords were not able to collect last month's rent at the beginning of the tenancy agreement until he was told this by the Rental Office. C.W. agreed with what was said by M.G.

Landlord's Evidence and Submissions

- [6] E.P. agreed that he collected the amounts as stated by M.G. E.P. stated he does not think the Tenants will pay him last month's rent and he wants to retain the extra \$1,500.00 in case he is not paid by the Tenants when they leave. E.P. stated the Tenants agreed at the start of the tenancy agreement that the extra \$1,500.00 could be retained as last month's rent.

Analysis

- [7] Both parties agreed the Tenants have overpaid \$1,500.00 to the Landlords. The Officer notes there is nothing in the *Act* which allows a Landlord to collect or retain "last month's rent" at the start of a tenancy agreement.
- [8] Subsection 14.(3) of the *Act* states:

A landlord shall not require or accept a security deposit that is greater than

(a) in the case of a tenancy agreement where the rent is paid weekly, the equivalent of one week's rent; and

(b) in any other case, the equivalent of one month's rent.

[9] Subsection 14.(4) of the Act states:

Where a landlord accepts a security deposit that is greater than the amount permitted under subsection (3), the tenant may deduct the overpayment from rent or make an application to the Director under section 75 to recover the overpayment.

[10] Subsection 14.(5) of the Act states:

where a landlord receives money or other value from a tenant that exceeds the amount of rent payable in respect of the rental unit, the excess money or value

Shall be considered a security deposit; or

Where the excess money or value, as a security deposit, would exceed the amount permitted under subsection (3), shall be considered partial payment of the next rent payment required under the tenancy agreement.

[11] Subsection 14.(5) of the Act states that if there is any money paid that exceeds the amount of rent payable then that excess money shall be considered the security deposit or partial payment of the next rent payment. The Officer notes that the parties agreed that a security deposit of \$500.00 was requested by the Landlords and has been paid by the Tenants.

[12] Therefore, the Officer finds that the Tenants have established that they have overpaid \$1,500.00 to the Landlords. The excess money in the amount of \$1,500.00 shall be considered payment of the next rent payment required under the tenancy agreement.

Conclusion

[13] The Application is allowed.

[14] The Landlords shall credit the Tenants rent in the amount of \$1,500.00 on or before November 1, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall credit the Tenants rent in the amount of \$1,500.00 on or before November 1, 2023.

DATED at Charlottetown, Prince Edward Island, this 16th 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.