

Introduction

- [1] On August 23, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2B) dated August 22, 2023 (the "Rent Owing Application") with the Residential Tenancy Office (the "Rental Office"), pursuant to sub-subsection 85.(1)(b) of the *Act* seeking payment of outstanding rent from the Tenant (Docket No. 23-632).
- [2] The Landlord is seeking \$2,500.00 in outstanding rental arrears for August 2023.
- [3] On September 7, 2023 the Landlord filed another *Landlord Application to Determine Dispute* (Form 2B) dated September 6, 2023 (the "Security Deposit Application") with the Rental Office seeking to retain the security deposit (Docket No. 23-654).
- [4] All documents were properly served on the parties.
- [5] On September 26, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing themselves. The Tenant did not appear and did not have any representative.

Issues to be Decided

- i. Must the Tenant pay rent to the Landlord?
- ii. Is the Landlord entitled to retain the security deposit?

Summary of the Evidence

- [6] On May 27, 2023 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. The Residential Property is a three-bedroom single family home. Rent was \$2,500.00 due on the first day of the month. A security deposit of \$2,500.00 was required and paid.

Landlord's Evidence and Submissions

- [7] The Landlord testified that at the time of the hearing the Tenant, along with all the sub-tenants have vacated the Residential Property. The Landlord testified that everyone vacated on or prior to August 31, 2023. The Landlord testified that the Tenant did not pay rent for August 2023. The Landlord testified that she is seeking \$2,500.00 in rent owing from the Tenant.
- [8] The Landlord testified that on September 1, 2023 she entered the Residential Property and inspected. The Landlord submitted into evidence photographs from that inspection. The Landlord testified that the Residential Property was left in an unclean state, with significant damage. The Landlord testified that there was a plumbing issue which resulted in water damage. The Landlord testified that the subtenants complained to the Tenant but the Tenant did not inform her of the issue. The Landlord submitted into evidence a video from July 9, 2023 regarding a conversation with the subtenants and the Tenant.
- [9] The Landlord testified that she wants to retain all of the security deposit because the Tenant left without paying the water/sewerage bill in the amount of \$242.60, an outstanding lawn care bill in the amount of \$210.00, damage to the Residential Property in the amount of \$18,147.00, damage to the refrigerator in the amount of \$340.94 and cleaning expenses in the amount of \$375.00. The Landlord testified that the total expense is well beyond the total amount of the security deposit.

Tenant's Evidence and Submissions

- [10] The Tenant did not appear at the hearing and did not provide any testimony. The Tenant did not submit any evidence.

Analysis

Issue i: Must the Tenant pay rent to the Landlord?

- [11] The Officer notes that the Landlord is seeking an order directing payment of rent for the month of August 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 notes that the Landlord testified that the Tenant pays rent by e-transfer, but did not pay any rent for August 2023. The Landlord submitted into evidence an e-mail from the Landlord to the Tenant dated August 2, 2023 which attached a *Notice of Termination by Landlord* (Form 4A) for non-payment of rent in the amount of \$2,500.00. The body of the e-mail detailed the reason for the e-mail (and Form 4A) was for non-payment of rent for August 2023.

- [13] The Officer notes that the Island Regulatory and Appeals Commission (the "Commission") in Order LR23-51 provided recent direction to the Rental Office in similar situations before the Officer. The Officer notes paragraph 40 and 41 of LR23-51 which state:

40. "On this point, the Commission wishes to provide future direction to the Residential Tenancy Office. Where the Residential Tenancy Office is asked to make findings respecting an amount of rent owing by a Tenant to a Landlord, that finding must be supported by a clear and cogent accounting of the amount owed..."
41. "...Therefore, when asked to make a finding like this, the Commission expects the Residential Tenancy Office to require Landlords to provide a full breakdown of amounts outstanding, supported by written records."

- [14] The Officer acknowledges that the direction by the Commission is helpful and agrees that a landlord's application for rent owing must be supported by clear accounting of outstanding rent. The Officer notes that to take a strict application of the Commission's direction in LR23-51 would compel the Officer to deny the Landlord's Rent Owing Application in this matter.

- [15] However, the Officer notes that each and every case is adjudicated based on its own set of facts which are determined by the evidence and testimony presented in that specific case. In this case, the Tenant did not participate and did not provide any evidence to dispute the Landlord's two applications. Further, the Officer notes that the Landlord did submit into evidence an e-mail to the Tenant with a Form 4A attached, dated August 2, 2023. The body of that e-mail detailed that the Tenant owed rent for August 2023. The Officer notes that the Tenant did not file an application to dispute that notice and vacated the Residential Property as of August 31, 2023 due to rent owing.

- [16] The Officer finds that the undisputed evidence and testimony of the Landlord taken in its totality establishes, on a balance of probabilities, that the Tenant owes the Landlord rent in the amount of \$2,500.00 for August 2023.

- [17] The Officer finds that the direction provided by the Commission in LR23-51 is appropriate guidance when there is a clear dispute of the amount of rent at issue between parties and/or when a landlord does not provide any evidence to assist in their claim of rent owing. However, the Officer finds neither of these options to be present in this case, and the Rent Owing Application is allowed. The Tenant shall pay the Landlord \$2,500.00 forthwith.

Issue ii: Is the Landlord entitled to retain the security deposit?

- [18] The Officer notes that subsections 40.(1), (2) and (3) of the Act state:

Return of security deposit

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

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

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.*

- [19] Further, the Officer notes that subsections 28.(4) and (5) of the Act state:

Tenant responsible for undue damage

A tenant of a rental unit shall repair, in a good and professional manner, undue damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Tenant not responsible for reasonable wear and tear

A tenant is not required to make repairs for reasonable wear and tear to the rental unit or common areas of the residential property.

- [20] The Officer makes comment that in such matters where there is a dispute over the security deposit, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all claims made against the security deposit.

- [21] The Officer notes that the security deposit is \$2,500.00 plus \$24.32 in accrued interest. The total amount of the security deposit in question is \$2,524.32.
- [22] The Officer finds that the Landlord has established a valid claim to retain the full amount of the security deposit and interest in the amount of \$2,524.32. The Officer finds that the Landlord has provided sufficient evidence to establish that the damage to the Residential Property is beyond normal wear and tear. Further, the Officer finds that the cleaning fee of \$375.00 is justified and established. The Officer finds that the water/sewerage bill was the responsibility of the Tenant's and remains unpaid. The total claim against the security deposit is above the total amount of the security deposit. Therefore, the Security Deposit Application is allowed, and the Landlord is entitled to retain the security deposit plus interest in the amount of \$2,524.32.

Conclusion

- [23] The Landlord's Rent Owing Application is allowed.
- [24] The Tenant shall pay the Landlord \$2,500.00 forthwith for outstanding rent.
- [25] The Landlord's Security Deposit Application is allowed.
- [26] The Landlord shall retain \$2,524.32, the security deposit and accrued interest.

IT IS THEREFORE ORDERED THAT

- A. The Tenant shall pay the Landlord \$2,500.00 forthwith for outstanding rent.
- B. The Landlord shall retain \$2,524.32, the security deposit and accrued interest.

DATED at Charlottetown, Prince Edward Island, this 17th 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.