

Introduction

- [1] On August 24, 2023, the Tenant 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 return of rent due to an unlawful rent increase.

To request the return of the security deposit.

- [2] On October 24, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord participated.
- [3] All documents were properly served on the parties.

Issues to be Decided

- i. Is the Tenant entitled to a return of rent for an unlawful rent increase?
- ii. Is the Tenant entitled to a return of part of the security deposit?

Summary of the Evidence

- [4] In April of 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-family house. Rent was \$2,000.00 per month and a security deposit of \$2,000.00 was paid. The Tenant vacated on July 31, 2023.

Tenant's Evidence and Submissions

- [5] The Tenant stated she is seeking a return of rent in the amount of \$650 x 3 months plus \$150.00 for one month, totaling \$2,100.00. The Tenant stated the Landlord charged her higher rent than the previous tenant. The Tenant stated she was charged \$2,000.00 per month and the previous tenant was charged \$1,350.00 per month. A copy of the previous tenant's tenancy agreement was submitted into evidence as well as the Tenant's tenancy agreement.
- [6] The Tenant stated she only had to pay \$1,500.00 for April rent, so she overpaid \$150.00. She stated she paid \$2,000.00 for May to July, so she overpaid \$650.00 per month for three months. The Tenant stated she was allowed to sublease some rooms in the Residential Property. She sublet one room from May to July for \$750.00 per month and sublet another room in June for \$600.00. The Tenant stated the subtenants paid her and then the Tenant paid the Landlord the \$2,000.00 per month.
- [7] The Tenant stated she is seeking a return of the rest of the security deposit in the amount of \$88.32. She stated by August 9, 2023, the Landlord returned \$1,911.68 of the security deposit but the Landlord kept \$88.32 for propane as the Landlord stated propane was not an included service. The Tenant stated the propane was for the cooking stove and the cooking stove was an included service in the tenancy agreement.

Landlord's Evidence and Submissions

- [8] The Landlord stated she was unaware of the rules around renting when she rented to the Tenant. She stated she purchased the Residential Property and had the previous tenant vacate so the Landlord could live in the Residential Property. The Landlord stated she was unable to move into the house right away, so she decided to rent it out to cover her mortgage. She stated she completed some renovations and thought that \$2,000.00 per month was a fair price.
- [9] The Landlord stated she agrees that the Tenant is entitled to a return of rent, but she does not know how much to return because the subtenants paid some of rent to the Tenant. The Landlord stated she tried to reduce the Tenant's rent when the parties became aware of the rules, but the Tenant agreed to keep paying \$2,000.00 per month.
- [10] The Landlord stated her realtor was involved in drafting the tenancy agreement and the Landlord did not review it in detail. She agreed that the cooking stove was an included service but the utility of the propane was not an included service. She stated that she should not have to return the remainder of the security deposit to the Tenant.

Analysis

Issue i: Is the Tenant entitled to a return of rent for an unlawful rent increase?

- [11] The Officer begins by referencing the relevant law for this part of the Application. Subsections 47.(1) and (2) of *Part 3* the *Act* state:
- (1) *A landlord shall not increase rent except in accordance with this Part.*
- (2) *The obligations of a landlord under this Part run with the rental unit and not the tenant.*
- [12] Subsections 49.(1), and (4) of the *Act* state:
- (1) *No landlord shall increase the rent charged for a rental unit by more than the allowable annual increase, except in accordance with section 50.*
- (4) *Notwithstanding subsections (2) and (3), the guideline for the 2023 calendar year is zero per cent.*
- [13] Subsection 50.(1) of the *Act* states:
- (1) *A landlord may request the Director's approval of a rent increase in an amount that is greater than the amount calculated under subsection 49(2) by making an application to the Director under section 75.*
- [14] Subsection 50.(8) of the *Act* states:
- (8) *Where a landlord collects a rent increase that does not comply with this Part, the tenant may make an application to the Director under section 75 to recover the amount of the increase.*
- [15] The parties agreed that the previous tenant paid \$1,350.00 per month and the Tenant was required to pay \$2,000.00 per month. The Officer notes that there is no evidence that the Landlord has applied for a greater than allowable rent increase with the Rental Office. Furthermore, the allowable rent increase for 2023 is zero percent and the Tenant moved into the Residential Property on April 15, 2023. The Officer notes that the current Tenant should be paying the same rent as the previous tenant, which the parties agreed was \$1,350.00.

- [16] The parties agreed from May to July the Tenant had a subtenant who paid \$750.00 per month ("Subtenant A") and in June there was an additional subtenant who paid \$600.00 per month ("Subtenant B").
- [17] In April, the Tenant paid \$150.00 (\$1,500.00 - \$1,350.00) of the unlawful rent increase herself. Therefore, the Officer finds the Tenant is entitled to a return of rent of \$150.00 for April.
- [18] In May and July, the Tenant paid \$1,250.00 and Subtenant A paid \$750.00 in rent. Subtenant A paid 37.5% of the overall rent which means Subtenant A paid 37.5% of the unlawful rent increase (\$243.75). Therefore, the Officer finds the Tenant is entitled to a return of 62.5% of the unlawful rent increase, totaling \$406.25 x 2 (\$812.50) for May and July.
- [19] In June, Subtenant A and Subtenant B paid \$1,350.00 (\$750.00 + \$600.00), which is 67.5% of the overall rent, which means the subtenants paid 67.5% of the unlawful rent increase (\$438.75). Therefore, the Officer finds the Tenant is entitled to a return of 32.5% of the unlawful rent increase totaling \$211.25 for June.
- [20] The Officer therefore finds that the Landlord has collected a rent increase that does not comply with *Part 3* of the *Act*. The Officer finds that the Tenant is entitled to recover the amount of the unlawful rent increase totaling \$1,173.75 calculated as:

April 2023 - \$150.00
May 2023 - \$406.25
June 2023 - \$211.25
July 2023 - \$406.25

Issue ii: Is the Tenant entitled to a return of part of the security deposit?

- [21] The Officer references the relevant law for this part of the Application. Subsections 40.(1), (2), (3), and (4) of the *Act* state:

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.

Consequences of non-compliance

(4) Where a landlord does not comply with this section, the landlord

(a) Shall not make a claim against the security deposit; and

(b) Shall pay the tenant double the amount of the security deposit.

[22] The tenancy ended on July 31, 2023, and the Landlord returned \$1,911.68 of the security deposit to the Tenant within 15 days of the end of the tenancy. Pursuant to subsection 40.(1) of the *Act*, the Landlord was required within 15 days of the end of the tenancy to either return the entirety of the security deposit to the Tenant or make an application to the Director under section 75 of the *Act* claiming against all or part of the security deposit. The Officer finds that the Landlord did not do either.

[23] The Officer finds that the evidence does not suggest that subsections 40.(2) or 40.(3) of the *Act* apply in this case. Therefore, the Officer finds that the Landlord has not complied with section 40 of the *Act*, and therefore triggers section 40.(4) of the *Act* regarding the remaining \$88.32 retained by the Landlord.

[24] The Officer finds that the Tenant is entitled to a return of the outstanding amount of the security deposit and that the Landlord shall pay the Tenant double the amount of the retained portion of the security deposit pursuant to subsection 40.(4) of the *Act*, in the amount of \$176.64 (\$88.32 x 2).

Conclusion

[25] The Application is allowed.

[26] The Landlord shall pay the Tenant \$1,173.75 for the unlawful rent increase plus double the amount of the retained security deposit, in the amount of \$176.64, totaling \$1,350.39, on or before December 1, 2023.

[27] **Order LD23-497** was served on the parties by email on October 27, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$1,173.75 for the unlawful rent increase plus double the amount of the retained security deposit, in the amount of \$176.64, totaling \$1,350.39, on or before December 1, 2023.
- B. A certified copy of **Order LD23-497** may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 27th 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.