

Introduction

- [1] On July 4, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking:

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

To make a claim against the security deposit.

- [2] The Landlord also filed a Form 8: Notice of Intention to Retain Security Deposit along with the Application. The Form 8 was dated June 17, 2023, and it was addressed to the Tenant and signed by the Landlord.
- [3] On October 24, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord participated.
- [4] 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 part or all of the security deposit?

Summary of the Evidence

- [5] On January 6, 2022, the Tenant and the Landlord entered into a written, fixed-term tenancy agreement for the Residential Property, which converted to a month-to-month agreement. The Residential Property consists of a rental unit in a multi-unit building. Rent was \$1,200.00 per month due on the first day of the month. A security deposit of \$1,200.00 was paid. The date the Tenant vacated the Residential Property is in dispute.

Landlord's Evidence and Submissions

- [6] The Landlord stated he wishes to retain the security deposit of \$1,200.00 for cleaning the rental unit, plumbing issues caused by the Tenant, the replacement of 3 keys, and having to hand deliver six notices to the Tenant for previous hearings. The Landlord stated it cost \$375.00 to hand deliver the notices. The Landlord stated he does not have any receipts or invoices for the costs.
- [7] The Landlord stated he is seeking rent owing in the amount of \$1,200.00 for June 2023. He stated the Tenant had appealed an IRAC eviction order to the Supreme Court of PEI, so the Landlord was unable to proceed with evicting the Tenant. The Landlord stated the Tenant abandoned the Supreme Court appeal on June 28, 2023, so the Landlord stated he considered the end of June to be when the Tenant vacated the rental unit.
- [8] The Landlord submitted a copy of the Supreme Court Notice of Abandonment into evidence. The Landlord stated the rental unit was re-rented for August 2023. The Landlord stated he did not receive any text messages from the Tenant stating when the Tenant was vacating the rental unit.

Tenant's Evidence and Submissions

- [9] The Tenant stated he moved out of the rental unit on June 6, 2023. He stated he sent a text message to the Landlord on May 6, 2023, that he would be vacating on June 6, 2023. The Tenant stated he is not able to access the text message from his phone.
- [10] The Tenant stated the rental unit was not clean when he moved in but he did clean before he moved out. He stated he left the two apartment keys on the table but he kept his mail key because he thought the mailbox would be re-keyed automatically. The Tenant stated he did remove the plug from the sink because the sink would not drain properly. He stated he left the plug in the bathroom when he moved out.

Analysis

Issue i: Does the Tenant owe the Landlord rent?

- [11] The Officer notes that the Landlord is seeking an order directing payment of rent for the month of June 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 Tenant stated he notified the Landlord by text message on May 6, 2023, that he was vacating the rental unit on June 6, 2023. The Landlord stated he did not receive any text messages and he was not notified the Tenant had abandoned his appeal until June 28, 2023. No evidence was submitted by the Tenant establishing that he had sent the text message to the Landlord.

- [13] The Subsection 55.(2) of the *Act* states:

(2) A tenant may end a month-to-month or other periodic 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; and

(b) is the day before the day that rent is payable under the tenancy agreement.

- [14] The *Act* states the Tenant was required to provide at least one month's notice and was to be the day before rent was due. Based on the evidence provided the parties, the Officer does not find the Tenant has established that he had provided any notice to the Landlord.
- [15] The Officer finds that the Landlord has provided sufficient evidence to establish his claim that the Tenant owes \$1,200.00 in outstanding rent for June 2023.

Issue ii: Is the Landlord entitled to retain part or all of the security deposit?

[16] Subsections 40.(1), (2), and (3) 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.*

[17] 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.

[18] The Officer finds that the Landlord has not provided sufficient documentary or witness evidence to establish the costs he stated were incurred for cleaning, plumbing, or key replacements.

[19] With regards to the \$375.00 the Landlord has claimed for hand delivering notices to the Tenant, the Act states a "security deposit" means:

money or any property paid by or on behalf of a tenant to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant respecting the rental unit.

[20] Based on the definition of security deposit in the Act, the Officer does not find that the cost of hand delivering notices to the Tenant would be considered the "performance of an obligation or the payment of a liability of the tenant respecting the rental unit."

[21] However, as the Officer has already found that the Tenant owes the Landlord \$1,200.00 in rent for June 2023, the Officer finds that the Landlord may retain the \$1,200.00 security deposit to offset rent owing, pursuant to subsection 40.(3)(b) of the Act.

Conclusion

[22] The Application is allowed in part.

[23] The Landlord shall retain the security deposit in the amount of \$1,200.00 for rent owing for June 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the security deposit in the amount of \$1,200.00 for rent owing for June 2023.

DATED at Charlottetown, Prince Edward Island, this 30th 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.