

## Introduction

[1] On September 19, 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 a determination that my landlord contravened by right to quiet enjoyment; and*

*Other: charged to have guest stay at the house.*

[2] On September 19, 2023, the Tenant served the Landlord with the Application by email, in accordance with subsection 100.(1) of the Act.

[3] On October 31, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord participated in the hearing.

## 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 a guest fee paid to the Landlord?
- iii. Did the Landlord contravene the Tenant's right to quiet enjoyment?

## Summary of the Evidence

[4] On May 1, 2023, the Tenant and the Landlord entered into a verbal fixed-term tenancy agreement for the Residential Property from May 1, 2023 to October 31, 2023. The Residential Property consists of a room rented in a single detached house. Rent was \$600.00 per month, paid as a lump sum at the beginning of the tenancy. No security deposit was paid.

### Tenant's Evidence and Submissions

[5] The Tenant submitted one page of documentary evidence, consisting of an unsigned statement from another tenant ("A.O.") who resided in the house between May and August of 2023. In the statement, A.O. complains of disrepair in the house and unrealistic expectations from the Landlord regarding noise level and cleanliness. A.O. further stated that the Landlord requested an increase in rent for the month of September 2023.

[6] The Tenant testified that he had lived with the Landlord in the rental unit from May to October 2022. The Tenant testified that he and the Landlord agreed for the Tenant to live in the rental unit again from May 1, 2023 to October 31, 2023. The Tenant testified that he and the Landlord agreed for the Tenant to pay the entirety of the rent for the six-month fixed-term at the beginning of the tenancy, which he did.

[7] The Tenant testified that some issues arose in August 2023 between the Landlord and Tenant. The Tenant testified that the Landlord and Tenant had a number of arguments about cleaning, use of shared items, and other issues around the house. The Tenant testified that in August 2023, the Landlord told him that he would raise rent \$100.00 for the month of September 2023. The Tenant testified that the Landlord originally wanted to raise the rent by more, but eventually settled on just a \$100.00 increase.

- [8] The Tenant testified that he decided to vacate the rental unit due to the rent increase. The Tenant testified that on August 27, 2023, he advised the Landlord that he would be vacating the Residential Property on August 31, 2023. The Tenant testified that he was returned his rent payment for the month of October 2023, but he was never returned his rent payment for the month of September 2023. The Tenant argued that he should be returned rent for September 2023 as he vacated the Residential Property due to an impending unlawful rent increase.
- [9] Further, the Tenant argued that the Landlord's conduct breached his right to quiet enjoyment. The Tenant testified that on one occasion, he was awoken by the Landlord opening his bedroom door, yelling at him, and threatening to raise rent further. The Tenant further testified that on various occasions the Landlord would slam doors in the house.
- [10] The Tenant also argued that he should be returned a \$200.00 guest fee he paid to the Landlord in order for his friend to be allowed to reside in the house for a short time. The Tenant testified that he offered the Landlord \$200.00 if he could let his friend stay at the house for two weeks. The Tenant testified that the request was accepted and he paid the Landlord \$200.00, and the friend stayed at the house for approximately two weeks. The Tenant testified that he felt that the Landlord would not have accepted his request if he did not offer him \$200.00.

#### **Landlord's Evidence and Submissions**

- [11] The Landlord submitted two pages of documentary evidence, including a bank statement showing a return of \$600.00 to the Tenant on September 5, 2023, as well as copies of text message exchanges between the Landlord and Tenant.
- [12] The Landlord testified that the Tenant paid rent upfront from May 1, 2023, to October 31, 2023. The Landlord testified that behaviour and cleanliness issues arose around August 2023. The Landlord testified that the Tenant continuously used items in the house without permission which belonged to the Landlord. The Landlord testified that the Tenant took the Landlord's food, kitchen supplies, pantry items, and bug spray. The Landlord testified that he eventually requested that the Tenant pay him \$100.00 in compensation. The Landlord testified that in no way was this ever characterized as a rent increase.
- [13] The Landlord testified that he kept the Tenant's rent payment for September 2023 and returned to the Tenant his rent payment for October 2023. The Landlord argued that he was entitled to retain the rent payment for the month of September 2023 because he and the Tenant had entered into a fixed-term tenancy agreement which the Tenant breached by vacating early. The Landlord argued that the Tenant was responsible for payment of rent throughout the length of the fixed-term tenancy agreement.
- [14] The Landlord testified that he attempted to find a replacement tenant after the Tenant vacated, but he was unsuccessful. The Landlord testified that he can only rent rooms in the house from May 1, to October 31 of each year, due to his work schedule. As such, it was difficult to find a replacement tenant for a period expiring so soon.
- [15] The Landlord argued that he did not breach the Tenant's right to quiet enjoyment. The Landlord testified that he did open the Tenant's bedroom door on one occasion, however, it was a reminder to pay \$100.00 in compensation for the use of his items. Additionally, the Landlord testified that he did not yell and that the Tenant had already been awake and had been walking around the house that morning.
- [16] The Landlord acknowledged that the Tenant paid him \$200.00 to allow his friend to stay at the house for approximately two weeks. The Landlord argued that the \$200.00 fee was the Tenant's idea and that he never asked the Tenant for any payment.

## Analysis

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

[17] The Officer notes that subsections 47.(1) and (2), 49.(1) and (4), and 55.(3) of the Act state:

#### **47. Rent increases**

(1) *A landlord shall not increase rent except in accordance with this Part.*

#### **Obligations tied to rental unit**

(2) *The obligations of a landlord under this Part run with the rental unit and not the tenant.*

#### **49. Allowable annual rent increase**

(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.*

#### **Transitional**

(4) *Notwithstanding subsections (2) and (3), the guideline for the 2023 calendar year is zero per cent.*

#### **55. Notice for fixed-term tenancy**

(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*

[18] The Officer finds that the Landlord did not raise rent during the tenancy and the Tenant never paid an increased amount of rent. The Officer notes the Tenant's testimony that he vacated the rental unit due to what he characterized as an upcoming rent increase. The Officer finds based on the Landlord's testimony that the Landlord requested \$100.00 in compensation for household items used by the Tenant which belonged to the Landlord. The Officer finds that this request for \$100.00 compensation was not an increase in rent.

[19] Further, the Officer finds that the Landlord was entitled to retain the Tenant's rent for September 2023. The Officer notes that the Landlord and Tenant were in a fixed-term tenancy until October 31, 2023, however, the Tenant vacated the Residential Property on August 31, 2023. The Tenant remained responsible for payment of rent for the duration of the tenancy agreement.

[20] The Officer finds that the Landlord attempted to mitigate his losses by seeking out a new roommate to replace the Tenant. However, the Landlord was unsuccessful as he only rents out the rental unit for a part of the year and he could not find a new tenant to occupy the rental unit for such a short period of time.

[21] The Officer finds that the Tenant's Application for return of rent due to an unlawful rent increase is denied.

**Issue ii: Is the Tenant entitled to a return of a guest fee paid to the Landlord?**

[22] The Officer notes the application of section 5., sub-subsection 20.(1)(a), and subsection 20.(2) of the *Act*, which state:

**5. This Act cannot be avoided**

*Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.*

**20. Prohibited fees during tenancy**

(1) *The landlord shall not charge*

(a) *A guest fee, whether or not the guest stays overnight.*

**Fees charged by landlord**

(2) *A landlord may charge a fee for*

(a) *the actual cost of replacing keys or other access devices;*

(b) *the actual cost of additional keys or other access devices requested by the tenant;*

(c) *a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;*

(d) *an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution;*

(e) *a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement; and*

(f) *a service prescribed in the regulations.*

[23] The Officer finds that the Tenant paid the Landlord \$200.00 as a guest fee to allow a friend to stay at the Residential Property for a period of approximately two weeks. The Officer finds that this was a prohibited fee under sub-subsection 20.(1)(a) of the *Act*.

[24] The Officer notes that a Tenant cannot waive his rights under the *Act*, pursuant to section 5. of the *Act*. The Officer therefore finds that the prohibition against guest fees pursuant to sub-subsection 20.(1)(a) of the *Act* still applies, despite the Tenant being the one to offer a guest fee to the Landlord.

[25] The Officer finds that the Tenant's Application for return of the guest fee is allowed. The Landlord shall pay the Tenant \$200.00 for the guest fee charged to the Tenant, forthwith.

**Issue iii: Did the Landlord contravene the Tenant's right to quiet enjoyment?**

[26] The Tenant's Application for a finding that the Landlord unlawfully entered the Residential Property is pursuant to subsection 22. of the *Act*, which states:

***Tenant's right to quiet enjoyment***

*A tenant is entitled to quiet enjoyment of the rental unit including, but not limited to, the right to*

(a) *reasonable privacy;*

(b) *freedom from unreasonable disturbance;*

(c) *exclusive possession of the rental unit, subject only to the landlord's right to enter the rental unit in accordance with section 23.;*

(d) *use of common areas for reasonable and lawful purposes, free from significant interference.*

- [27] The Officer notes that in a dispute over unlawful entry by the Landlord, it is the Tenant's burden or onus to prove, on a balance of probabilities, that the Landlord breached the Tenant's right to quiet enjoyment.
- [28] The Officer finds that the Tenant has not provided sufficient evidence to establish that the Landlord breached the Tenant's right to quiet enjoyment. The Officer finds based on the testimonies of the parties that the Tenant has failed to establish that the Landlord slammed doors in the Residential Property in a manner that constitutes unreasonable disturbance. The Officer further finds that the Landlord opening the Tenant's bedroom door to tell him to pay for the Landlord's items that were used without permission does not warrant a finding of a breach of quiet enjoyment.
- [29] The Tenant's Application to request a finding that the Landlord contravened the Tenant's right to quiet enjoyment is denied.

**Conclusion**

- [30] The Application is allowed in part.
- [31] The Landlord shall pay the Tenant \$200.00 for the guest fee charged to the Tenant, forthwith.
- [32] **Order LD23-524 was served on the parties by email on November 15, 2023.**

**IT IS THEREFORE ORDERED THAT**

- A. The Landlord shall pay the Tenant \$200.00 for the guest fee charged to the Tenant, forthwith.
- B. A certified copy of **Order LD23-524** may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

**DATED** at Charlottetown, Prince Edward Island, this 15th day of November, 2023.

\_\_\_\_\_  
(sgd.) Colin Trewin  
Colin Trewin  
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.