

Introduction

- [1] On November 1, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office").
- [2] Attached to the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated November 1, 2023, with a vacate date of December 1, 2023. The Notice was served to the Tenant on November 1, 2023 for the following reasons:

*You or someone you have allowed on the property has caused damage to the rental unit;
and
You have not repaired damage to the rental unit.*

- [3] The first remedy sought in the Application is to dispute the Notice, which is the subject of Order LD23-556. The second remedy sought is a return of rent due to an unlawful rent increase, which is the subject of this decision.
- [4] On November 21, 2023 a teleconference hearing was held before the Officer for determination of the Application. The parties confirmed receipt of the evidence package. The Officer permitted a copy of the tenancy agreement to be submitted after the hearing.

Issue to be Decided

- i. Did the Landlord collect an unlawful rent increase from the Tenant?

Summary of the Evidence

- [5] The Landlord and the Tenant entered into a written, fixed term rental agreement dated October 7, 2021 for the period of October 10, 2021 to October 9, 2022. The tenancy continued at the end of the fixed term. The agreement states that rent in the amount of \$2,100.00 was due each month and a \$2,100.00 security deposit was paid.
- [6] The Rental Unit is a three-bedroom, two-and-a-half-bathroom unit in a triplex building that the Landlord purchased in September 2021.
- [7] The Tenant's evidence is summarized as follows. The Tenant made twelve rent payments of \$2,100.00 per month and then the Landlord increased the rent to \$2,150.00 in October of 2022. The Tenant has paid the higher rent, with the last payment being made on October 31, 2023. The Landlord now seeks to increase the rent to \$2,200.00 per month. The Tenant did not receive a proper rent increase form or application from the Landlord.
- [8] The Landlord's evidence is summarized as follows. The Tenant made twelve rent payments of \$2,100.00 per month and then the Landlord increased the rent to \$2,150.00 in October of 2022. The Landlord received \$2,100.00 for the period of July 10, 2023 to August 9, 2023, as stated in the rent ledger submitted into evidence. The Tenant's rent payment on October 31, 2023 was for the period of October 10, 2023 to November 9, 2023. The Landlord has not received rent for the period of November 10, 2023 to December 9, 2023.
- [9] The Landlord increased the Tenant's rent to \$2,150.00 because the Landlord's operating costs increased and the Tenant agreed to the increase. If the Tenant had refused the rent increase, then the Landlord would have gone through the Rental Office to obtain a rent increase.

Analysis and Conclusion

[10] The *Residential Tenancy Act*, RSPEI 1988, R-13.11 came into force on April 8, 2023. As of October 2022, the month that the rent collected increased from \$2,100.00 to \$2,150.00, the law governing rent increases was the *Rental of Residential Property Act*, RSPEI 1988, R-13.1.

[11] In Order LR19-15 the Island Regulatory and Appeals Commission (the "Commission") stated the following regarding the *Rental of Residential Property Act* and rent increases:

*"In Prince Edward Island, the Rental of Residential Property Act (the "Act") provides for a system of rent control whereby rent runs with the residential unit. When a lessee surrenders possession of that unit to the lessor, that rate of rent still remains fixed to that unit. This rent applies to a subsequent lessee even if the unit has been vacant between the tenancies. **Any agreement as to the amount of rent reached between lessor and lessee is null and void to the extent that it runs contrary to the rent control provisions of the Act.***

To balance out the rigours of rent control, Part IV of the Act sets out the process whereby rent increases may lawfully be made. If a lessor raises the rent of a unit without first following the process set out in Part IV of the Act, such an increase is illegal...

Both the Appellant and [Mr. W] pleaded lack of knowledge as to the quantum of the previous rent and lack of familiarity as to the requirements of the Act. [Mr. W.'s] testimony appeared to deflect blame to others. Lack of familiarity of the Act does not in any way mitigate the requirements of the Act."

[Emphasis added]

[12] The Officer notes that the \$50.00 increase amounted to a 2.38% increase of the \$2,100.00 monthly rent, which was above the annual allowable 1.00% for 2022. Any mutual agreement to a rent increase above the allowable percentage was not valid, as stated by the Commission above.

[13] As of October 2022, in order for the Landlord to lawfully increase the rent above the allowable percentage, the Landlord would need to have served a rent increase notice (Form 10) to the Tenant, filed a rent increase application (Form 12), submitted into evidence supporting documents (including a Form 15 financial statement), attended a Rental Office hearing, and obtained an order approving the rent increase. The evidence of the parties establishes that the Landlord did not follow this process and therefore the Rental Unit's authorized monthly rent remains \$2,100.00.

[14] Based upon the evidence presented, the Tenant made twelve rent payments to the Landlord in the amount of \$2,150.00 for the period of October 10, 2022 to November 9, 2023.

[15] The evidence does not establish that the Tenant paid \$2,150.00 for the period of July 10, 2023 to August 9, 2023. The Landlord's rent ledger states that the amount \$2,100.00 was paid for this period and therefore an unlawful rent increase was not proven for this specific period.

[16] The Application is allowed in part. The Landlord must return rent to the Tenant, forthwith, in the amount of \$600.00 (12 months multiplied by \$50.00) due to an unlawful rent increase.

[17] The law governing rent increases is now the *Residential Tenancy Act* and the Landlord would need to follow this legislation in order to increase the rent above the annual allowable percentage.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant, forthwith, the amount of \$600.00.
2. Rent for the Rental Unit is set at \$2,100.00 per month. This amount is fixed and can only be increased by following the process set out in the *Residential Tenancy Act*.

DATED at Charlottetown, Prince Edward Island, this 29th day of November, 2023.

(sgd.) Andrew Cudmore

Andrew Cudmore
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.