

## Introduction

- [1] On September 18, 2023, the Tenants filed a Tenant Application to Determine Dispute (Form 2A) (the "Tenant Application") with the Residential Tenancy Office (the "Rental Office"). The Tenant Application is seeking: a return of rent due to an unlawful rent increase, a return of the security deposit, compensation for an eviction for renovations.
- [2] On September 20, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Landlord Application") with the Rental Office. The Landlord Application is seeking: to make a claim against the security deposit, payment for outstanding rent, and for a return of \$1,400.00 in compensation paid to the Tenants.
- [3] On November 16, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants and the Landlord participated.
- [4] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.

## Issues to be Decided

- i. Are the Tenants entitled to a return of rent due to an unlawful rent increase?
- ii. Are the Tenants entitled to compensation for an eviction for renovations?
- iii. Is the Landlord entitled to rent owing and to retain the security deposit?

## Summary of the Evidence

- [5] In June of 2020, the Tenants and the Landlord entered into a written month-to-month tenancy agreement for the Residential Property. The Residential Property consists of one half of a duplex. Rent was \$1,375.00 due on the first day of the month. A security deposit of \$1,375.00 was paid. The Tenants vacated the Residential Property on August 31, 2023, due to an eviction for renovations.

## Tenants' Evidence and Submissions

- [6] The Tenants submitted several pages of evidence including text messages between the parties and banking documents.
- [7] The Landlord unlawfully raised the rent from \$1,375.00 to \$1,400.00 per month from August 1, 2021, until July 1, 2023, totaling 24 months. The Tenants are seeking a return of rent due to the unlawful rent increase.
- [8] The Landlord evicted the Tenants for renovations and they are seeking two month's rent in compensation totaling \$2,800.00, as they should have been given four months' notice instead of two months' notice. The Landlord did compensate the Tenants a month's rent in the amount of \$1,400.00 and stated the Tenants were not required to pay rent for August 2023.
- [9] The Landlord did not return the security deposit after the Tenants vacated and they are seeking a return of double of the security deposit in the amount of \$1,375.00 plus interest x 2.
- [10] The Landlord asked the Tenants to fill the oil tank when they moved out but the Landlord was going to be installing a heat pump after the Tenants vacated. The Tenants are disputing that they should have to fill the oil tank because they were evicted for renovations and the Landlord should have had the heat pump ready to be installed when they moved out.

**Landlord's Evidence and Submissions**

- [11] The Landlord submitted several pages of evidence including text messages between the parties, tax bills, photographs, and written submissions.
- [12] The Tenants agreed to a rent increase of \$25.00 per month because the Landlord's expenses had increased. He agreed not to raise the rent for two years after the increase. He did not submit any paperwork to the Rental Office.
- [13] The Tenants did not pay rent for August 2023 in the amount of \$1,400.00 and there was no agreement in place stating the Tenants did not have to pay. The Tenants did not fill the oil tank after they vacated and the tenancy agreement states the oil tank was to be filled after vacating. He never told the Tenants they did not have to fill the oil tank and it cost him \$1,350.27 to fill the oil tank. The Landlord is seeking to keep the security deposit and to have the Tenants pay rent owing to cover these expenses.
- [14] The Tenants vacated on August 31, 2023, and he provided the Tenants with \$1,400.00 in compensation for having to move out.

**Analysis****Issue i: Are the Tenants entitled to a return of rent due to an unlawful rent increase?**

- [15] The Tenants are seeking a return of rent due to an unlawful rent increase. The Act states:

***This Act cannot be avoided***

*(5). 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.*

**PART 3 - WHAT RENT INCREASES ARE ALLOWED*****Rent increases***

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

***Notice of increase***

*47.(2) Where a landlord increases the amount of rent payable, the landlord shall give the tenant written notice of the increase*

*(b) at least three months before the effective date of the increase where the rental unit is rented from month to month or for a fixed term.*

***Notice shall be in approved form***

*48.(4) A notice of a rent increase shall*

- (a) be in the approved form;*
- (b) be signed by the landlord;*
- (c) state the effective date of the increase;*
- (d) state the amount of the increase;*
- (e) state the amount of rent payable when the increase becomes effective; and*
- (f) be served on the tenant in a manner set out in section 100.*

- [16] The Officer finds that the Tenants have established that they are entitled to a return of rent of \$25.00 per month from August 2021 to July 2023, equaling 24 months, totaling \$600.00. Although the parties agreed to a \$25.00 per month rent increase, section 5 of the *Act* states that “a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.” It is the responsibility of the Landlord to ensure that any rent increase complies with PART 3 of the *Act*.
- [17] The Officer finds that the rent increase did not comply with PART 3 of the *Act*, as the Tenants were not provided with a notice of increase in the approved form at least three months before the effective date of the increase. This part of the Tenant Application is allowed.

**Issue ii: Are the Tenants entitled to compensation for eviction for renovations?**

- [18] The Tenants are seeking two months of rent for compensation for being evicted for renovations. The *Act* states:

***Landlord’s notice for demolition, conversion, repairs, renovations***

*64.(1) A landlord may give a notice of termination if the landlord, after obtaining all necessary permits and approvals as required by law, requires possession of the rental unit in order to*

*(c) subject to the approval of the Director under subsection (2), do repairs or renovations to the rental unit that are so extensive that they require vacant possession of the rental unit.*

**Compensation for repairs and renovations**

*70.(1) A landlord shall compensate a tenant who receives notice of termination of a tenancy under section 64 for the purpose of repairs or renovations in an amount equal to one month’s rent plus reasonable moving expenses in accordance with the regulations, or shall offer the tenant another rental unit acceptable to the tenant...*

Subsection 6.(1) of the *Residential Tenancy Regulations* (the “*Regulations*”) state:

*For the purposes of subsections 70(1) and (2) and sections 71 and 72 of the Act, reasonable moving expenses are the lesser of the actual expenses of the move or one month’s rent.*

- [19] The Officer finds the Tenants have established they are entitled to compensation as a result of an eviction for renovations. Although the Tenants agreed to end the tenancy and were not served with a “notice of termination,” this does not absolve the Landlord from his obligations under the *Act*. As noted previously, section 5 of the *Act* states “a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.”
- [20] Section 70.(1) of the *Act* states the compensation for renovations is “an amount equal to one month’s rent” plus “reasonable moving expenses in accordance with the regulations” which is “the lesser of the actual expenses of the move or one month’s rent.”
- [21] The Officer finds the Landlord has already provided the Tenants with the equivalent of one month’s rent in compensation (\$1,400.00), which is \$25.00 more than one month’s rent, as the lawful rent should have been \$1,375.00. The Officer further finds that the Landlord shall compensate the Tenants with reasonable moving expenses the equivalent of one month’s rent (\$1,375.00), minus the \$25.00 overpayment, totaling \$1,350.00. This part of the Tenant Application is allowed.

**Issue iii: Is the Landlord entitled to rent owing and to retain the security deposit?**

- [22] The Landlord is seeking to retain the security deposit for filling the oil tank and rent owing for August 2023.

***Return of security deposit***

*40.(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.*

***Retention by landlord, other circumstances***

*40.(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***

*40.(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 the security deposit.*

***Tenant shall pay rent when due***

*19.(1) A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.*

***Unpaid utilities***

*60. (6) A landlord may treat unpaid utilities charges as unpaid rent...*

- [23] The parties were communicating after the end of the tenancy, in good faith, regarding filling the oil tank, however communication between the parties ceased. The Tenants then filed the Tenant Application after the 15-day window. The Landlord filed the Landlord Application two days later once he was aware that the negotiations were no longer continuing between the parties.
- [24] It would not be appropriate in this case to strictly hold the Landlord to the 15-day deadline required in subsection 40.(1) of the *Act*, as the parties were communicating in good faith, and those communications ceased. In such a scenario, the Tenants cannot rely on the punitive measures prescribed in subsection 40.(4) of the *Act* and attempt to regain the security deposit without the case being determined on its merits.

- [25] The *Act* states a landlord must either return the security deposit in full plus interest to the tenant or file an application with the Rental Office within 15 days from the end of the tenancy. However, subsection 40.(3)(b) of the *Act* provides an exception and allows some discretion on behalf of the Officer. The Officer finds that the Landlord is exempted from the rigours of 40.(1) of the *Act*.

### Oil Tank

- [26] The Officer finds the Landlord has established his claim to retain part of the security deposit in the amount of \$1,350.27, for filling the oil tank. The Landlord has provided sufficient evidence, specifically the tenancy agreement and text messages between the parties, to establish that the Tenants were required to fill the oil tank upon vacating the Residential Property and they failed to do so. This part of the Landlord Application is allowed.

### Rent for August 2023

- [27] The Officer finds the Landlord has established the Tenants owe \$1,375.00 for outstanding rent for August 2023. The parties had conflicting testimony as to whether the Tenants had to pay rent for August 2023 or not. Subsection 19.(1) of the *Act* states that a tenant must pay rent unless they have an express right under the *Act* to deduct or withhold a portion of the rent. The Officer does not find the evidence establishes the Tenants had an express right under the *Act* to withhold rent for August 2023. This part of the Landlord Application is allowed.

### Conclusion

- [28] The Tenant Application is allowed in part:
- The Officer finds the Tenants have established they are entitled to a return of rent due to an unlawful rent increase.
  - The Officer finds the Tenants established they are entitled to the equivalent of one month's rent for reasonable moving expenses for being evicted for renovations.
  - The Officer finds the Tenants have not established they are entitled to a return of the security deposit.
- [29] The Landlord Application is allowed in part:
- The Officer finds the Landlord has established a valid claim against the security deposit plus accrued interest.
  - The Officer finds the Landlord has established the Tenants are responsible for paying for the oil bill and for rent for August 2023.
  - The Officer finds the Landlord has not established that he is entitled to a return of the \$1,400.00 in compensation paid to the Tenants.

- [30] Subsection 85.(1)(b) of the *Act* states:

#### **85. Powers of the Director**

- (1) After hearing an application, the Director may make an order
- directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord.

- [31] The interest for the security deposit is accrued to the date this Order is issued. Section 14.(9) of the *Act* states:

***Interest rate***

*A landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord.*

- [32] The Officer offsets the amount owing by the Tenants for oil and rent (\$1,350.27 + \$1,375.00) from the security deposit and accrued interest (\$1,437.96) and moving compensation (\$1,350.00), which leaves \$62.69 remaining to the Tenants. With the \$62.69 remaining plus the \$600.00 return of rent to the Tenants, this totals **\$662.69** owed to the Tenants. The calculations are as follows:

Item	Amount
Security Deposit and Accrued Interest (Jan. 1, 2019 – Dec. 6, 2023)	\$1,437.96
Compensation for Moving Expenses	\$1,350.00
Less amount owing for Oil Tank	(\$1,350.27)
Less Rent Owing for August 2023	(\$1,375.00)
<b>Total remaining to Tenants after offset</b>	<b>\$62.69</b>
Return of Rent to the Tenants	\$600.00
<b>Total amount owing to the Tenants</b>	<b>\$662.69</b>

- [33] Order LD23-573 was served on the parties by email on December 6, 2023.

**IT IS THEREFORE ORDERED THAT**

- A. The Landlord shall pay the Tenants **\$662.69** on or before January 30, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 6th day of December, 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.