

Introduction

- [1] On November 1, 2023 the Landlords filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking to retain the Tenant's security deposit for cleaning and the disposal of garbage and property that were left in the Rental Unit. The Application named the Tenant and an occupant ("J.P.") as respondents.
- [2] On November 7, 2023 notice of a hearing scheduled for 1:00 p.m. on November 28, 2023 was emailed to the Landlords, the Tenant and J.P., along with a copy of the Application.
- [3] On November 23, 2023 the Rental Office emailed an evidence package to the parties. The Rental Office also faxed a copy of the Evidence Package documents to the Tenant at the Provincial Correctional Centre.
- [4] On November 28, 2023 the Landlord participated in a teleconference hearing with the Residential Tenancy Officer (the "Officer"). The Rental Office telephoned J.P. and was advised that he would not participate in the teleconference hearing. The Rental Office attempted to contact the Tenant shortly after 1:00 p.m. but was unable to speak with the Tenant directly. The Officer waited until 1:10 p.m. before proceeding with the hearing in the absence of the Tenant. The hearing concluded at 1:34 p.m.

Issue to be Decided

- i. Have the Landlords established a valid claim against the security deposit for cleaning and disposal expenses?

Summary of the Evidence

- [5] The Landlords' evidence is summarized as follows. The Rental Unit is a four-bedroom, one-bathroom apartment located in a six-unit building (the "Residential Property"). The former owner of the Residential Property, the Tenant and two other tenants were parties to a tenancy agreement. A security deposit of \$450.00 was paid on November 18, 2016. The Landlords purchased the Residential Property in November 2020 and the tenancy continued.
- [6] The Landlords, the Tenant and the two other tenants entered into a written, month-to-month tenancy agreement for the Rental Unit dated December 15, 2020. Rent in the amount of \$1,206.00 was due on the first day of the month. The two other tenants moved out of the Rental Unit and the Tenant remained.
- [7] The Landlords, the Tenant and J.P. were the subject of an earlier Rental Office decision. In Order LD23-476 the Tenant and all occupants were ordered to vacate the Rental Unit by 5:00 p.m. on October 18, 2023. The Rental Unit was vacated on October 18, 2023 without Order LD23-476 being enforced by Sheriff Services. The Tenant was also ordered to pay the Landlords rent in the amount of \$2,412.00 forthwith.
- [8] J.P. lived in the Rental Unit for four months without the Landlords' knowledge. In August 2023 the Landlords learned that J.P. was living in the Rental Unit and he wanted to take over the lease. Before the Landlords were willing to let J.P. take over the lease they wanted J.P. to demonstrate a few months of rent paying ability. However, J.P. did not make the rent payments. The Landlords sent J.P. an application to rent but J.P. never completed this document. The Landlords did not have a direct tenancy agreement with J.P. The Landlords do not know the nature of the agreement between the Tenant and J.P.
- [9] The Tenant left the Rental Unit in filthy condition. The Tenant left behind junk, garbage and food in the Rental Unit. The Landlords submitted into evidence a video showing the Rental Unit as of October 18, 2023. The Landlords had a cleaner examine the Rental Unit shortly after October 18,

2023 and he quoted a cost of \$1,050.00. The cleaner has completed additional work in the Rental Unit, which is a cost above the \$1,050.00 amount.

[10] The Landlords calculate the security deposit to be \$479.76, including interest. At the hearing the Landlord stated that the Landlords seek to retain the Tenant's security deposit and also a monetary claim of \$570.24.

[11] The Officer has calculated the security deposit plus interest to total \$481.76.

Analysis

[12] The evidence presented establishes that a tenancy agreement does not exist between the Landlords and J.P. Therefore, J.P. is not a proper party to this proceeding because he is an occupant, not a tenant. The *Act* provides the Officer with authority to issue monetary orders between landlords and tenants. However, the *Act* does not permit the Officer to issue a monetary order for a payment from an occupant to a landlord (see subsection 85(1)).

[13] In the Application the Landlords selected item (e) to make claim against the Tenant's security deposit. Item (g) of the Application "*Other*" was left blank. The particulars of the Application state that the Landlords are claiming against the security deposit for cleaning and garbage removal costs. Although the particulars state that the total cost of cleaning the Rental Unit was \$1,050.00, the Application does not make it clear that the Landlords were making a monetary claim above the security deposit. As a result, it would not be procedurally fair for the Officer to order an amount above the security deposit in this decision.

[14] Subsection 39(2) states:

(2) When a tenant vacates a rental unit, the tenant shall

(a) leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear; and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[15] The Landlords' evidence establishes that the Rental Unit was left in an unclean state, with food waste and garbage left behind. Based upon the evidence presented it appears to the Officer the Landlords would incur at least \$481.76 in order to bring the Rental Unit to a reasonably clean state. As a result, the Officer finds that the Landlords will retain the Tenant's entire security deposit.

Conclusion

[16] The Application is allowed and the Landlords will retain the Tenant's entire security deposit, in the amount of \$481.76.

IT IS THEREFORE ORDERED THAT

1. The Landlords will retain the Tenant's entire security deposit, in the amount of \$481.76.

DATED at Charlottetown, Prince Edward Island, this 20th day of December, 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.