

Introduction

- [1] On October 23, 2023 the Landlords filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “First Application”) with the Residential Tenancy Office (the “Rental Office”). In this application the Landlords requested an order for: (1) outstanding rent; (2) delivery of possession; and (3) retention of the security deposit.
- [2] The Landlords’ request for delivery of possession was based upon an Eviction Notice (Form 4(A)) dated October 3, 2023 for non-payment of rent in the amount of \$2,000.00 and repeatedly late rent payments.
- [3] On November 3, 2023 the Tenant vacated the Rental Unit. As a result, an order for delivery of possession is no longer necessary.
- [4] On November 6, 2023 the Landlords filed a second *Landlord Application to Determine Dispute* seeking to retain the Tenant’s entire security deposit (the “Second Application”). The Officer notes that the claim in the First Application for retention of the security deposit was premature as the Tenant had not vacated the Rental Unit at that time.
- [5] The First Application and the Second Application are collectively referred to in this decision as the “Applications.” The Landlords emailed the Tenant copies of the Applications.
- [6] On November 15, 2023 the Rental Office emailed the parties notice of a hearing scheduled for 9:00 a.m. on November 30, 2023.
- [7] On November 27, 2023 the Rental Office emailed an evidence package to the parties.
- [8] On November 30, 2023 the Landlord joined the teleconference hearing scheduled at 9:00 a.m. The Officer telephoned the Tenant and was advised by the Tenant that he was unaware of the scheduled hearing. The Officer confirmed the email address that the Rental Office had sent the notice of hearing and the evidence package. The Tenant confirmed that this email address is used by the Tenant occasionally. The Tenant provided the Officer with an additional email address. The hearing was adjourned to 9:00 a.m. on December 7, 2023 and the Tenant was provided additional time to file documentary evidence.
- [9] On December 1, 2023 the Rental Office emailed the parties (including the Tenant’s two email addresses) notice of a rescheduled teleconference hearing at 9:00 a.m. on December 7, 2023 and a copy of the Applications. The documentary evidence deadline was extended to December 5, 2023, however, the Tenant did not submit any documentary evidence.
- [10] On December 7, 2023 the Landlord joined the teleconference hearing at 9:00 a.m. The Officer telephoned the Tenant but there was no response. The Officer left a voicemail message for the Tenant with the teleconference call-in information. The Officer waited until 9:10 a.m. before moving forward with the hearing in the absence of the Tenant. The hearing concluded at 10:11 a.m. The Landlords were permitted to submit additional documentary evidence after the hearing.
- [11] The Officer notes that the security deposit plus interest totals \$2,050.00.

Issues to be Decided

- i. Does the Tenant owe rent to the Landlords?
- ii. Can the Landlords retain the Tenant’s entire security deposit?

Summary of the Evidence

- [12] The Landlords' evidence is summarized as follows. The Rental Unit is a four-bedroom, two-bathroom, single family dwelling that the Landlords have owned since April of 2022.
- [13] The Landlords, the Tenant and another tenant entered into a written, fixed term tenancy agreement for the period of May 1, 2022 to April 30, 2023. The other tenant moved out of the Rental Unit in January of 2023 and the Tenant became the sole tenant of the Rental Unit. At the end of the fixed term the tenancy continued on a month-to-month basis. Rent in the amount of \$2,000.00 was due on the first day of the month and a security deposit of \$2,000.00 was paid on or about May 1, 2022.
- [14] The Landlords provided documentary evidence and testimony regarding rent owing for the period of October 1, 2023 to November 3, 2023. The rent was paid up to September 30, 2023 with the last rent payments being \$1,500.00 on September 4, 2023 and \$500.00 on September 9, 2023.
- [15] The 900-liter furnace oil tank was full at the beginning of the tenancy. Landlords submitted into evidence an Irving Energy invoice dated May 4, 2022 for a fuel delivery to bring the tank from partially full to completely full. The tenancy agreement states that oil is the responsibility of the Tenant and clause 4 of Schedule "D" states:
- "The oil tank will be filled up upon tenants moving in and the oil tank needs to be full upon tenants leaving or tenants will be charged for filling up."*
- [16] The Landlords submitted into evidence photographs showing the empty furnace oil tank (Evidence Package pages 40 and 41). The Landlords calculate the cost to fill the tank to be \$1,332.45. Due to the non-payment of rent and damage the Landlords have had difficulty paying for furnace oil.
- [17] At the end of the tenancy a fireplace mantel, shelves and other items were missing from the Rental Unit. These items had been purchased and installed by a former owner, before the Landlords purchased the Rental Unit. The Landlords submitted into evidence photographs of the Rental Unit at the beginning of the tenancy (Evidence Package page 24) and the end of the tenancy (Evidence Package page 45) showing the missing fireplace mantel and shelves. The Landlords also submitted into evidence comparable items to show the estimated cost of the missing items. The materials cost of the mantel was \$679.15 and the materials cost of the shelving was \$149.90
- [18] The Landlords provided evidence regarding additional damage and cleaning expenses for the Rental Unit of approximately \$4,000.00.

Analysis

- [19] The Landlords' first claim is for rent owing. The written tenancy agreement submitted into evidence states that the monthly rent is \$2,000.00. The Landlord provided testimony regarding the rent history for the unit. The Notice submitted into evidence by the Landlords states that \$2,000.00 in rent was outstanding as of October 3, 2023. The Landlords also provided message correspondence with the Tenant regarding unpaid rent.
- [20] Based upon the evidence presented, the Landlords have established that the Tenant owes rent in the amount of \$2,200.00 for the period of October 1, 2023 to November 3, 2023 (\$2,000.00 for October 2023 plus \$200.00 for November 1 to 3, 2023).

- [21] With regard to the Landlords' second claim for retention of the security deposit, subsection 39(2) of the *Residential Tenancy Act*, RSPEI 1988, R-13.11 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.

- [22] The Landlords have established that the furnace oil tank was full at the beginning of the tenancy, empty at the end of the tenancy, and the Tenant was responsible for ensuring the tank was full. The Officer accepts the Landlords' calculation of \$1,332.45 as the estimated cost for filling the furnace oil tank. The Landlords have also established that the fireplace mantel and shelving were removed from the Rental Unit during the tenancy. The Officer finds that these amounts are also proper deductions, up to the balance of the security deposit, in the amount of \$717.55.
- [23] As a result, the Landlords will retain the Tenant's entire security deposit, in the amount of \$2,050.00.
- [24] In the Applications the Landlords selected items (a) for outstanding rent and (e) for retention of the security deposit. Item (g) of the Applications "*Other*" was left blank. The Applications make it clear that the Landlords are seeking a monetary order for rent owing and an order authorizing retention of the security deposit. As the Applications do not state that the Landlords are claiming an amount above the security deposit for damage and cleaning expenses, it would not be procedurally fair for the Officer to order an amount above the security deposit in this decision with regard to damage and cleaning expenses.

Conclusion

- [25] The Applications are allowed.
- [26] The Tenant must pay the Landlords \$2,200.00 for rent owing by the date below. The Landlords are authorized to retain the Tenant's entire security deposit.

IT IS THEREFORE ORDERED THAT

1. The Tenant must pay the Landlords \$2,200.00 for rent owing by January 23, 2024.
2. The Landlords will retain the Tenant's entire security deposit, in the amount of \$2,050.00.

DATED at Charlottetown, Prince Edward Island, this 3rd day of January, 2024.

(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.