

Introduction

- [1] On December 18, 2023 the Subtenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks a return of rent and compensation for loss personal items pursuant to clause 85(1)(d) of the *Residential Tenancy Act* (the "Act").
- [2] The Subtenant is seeking \$850.00 in return of rent and \$7,000.00 in compensation.
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with clause 100(1) of the *Act*.
- [4] On January 18, 2024 a teleconference hearing was held at 9:00 a.m. before a Residential Tenancy Officer (the "Officer"). The Subtenant appeared, representing themselves. The Tenant acting as the Landlord did not appear and had no representative.

Issues to be Decided

- i. Is the Subtenant entitled to a return of rent?
- ii. Is the Subtenant entitled to compensation?

Summary of the Evidence

- [5] On August 1, 2023 the parties entered into a verbal month-to-month sub-tenancy agreement for the Rental Unit. The Rental Unit is situated in a basement unit, below a bungalow where the Tenant resides (the "Residential Property"). Rent was \$850.00 due on the first day of the month. No security deposit was required.

Subtenant's Evidence and Submissions

- [6] The Subtenant submitted numerous documents into evidence including: screenshots of e-transfer payments showing rent payments, photographs of the Rental Unit, messages between the parties, and an itemized list of the Subtenant's personal belongings.
- [7] The Subtenant testified that before he moved into the Rental Unit the Tenant's daughter lived in the Rental Unit. The Subtenant testified that the Rental Unit was in a dirty condition when he first moved into the Rental Unit.
- [8] The Subtenant testified that on or around November 8, 2023 he received a message from the Tenant saying "Don't come back". The Subtenant testified that the Tenant locked him out of the Residential Property and he was not permitted access to the Rental Unit. The Subtenant testified that he was "illegally evicted" and he did not want to escalate the issue by attempting to return to the Residential Property. The Subtenant attempted to return to the Rental Unit with an RCMP officer, but he was not permitted access to the Rental Unit. The Subtenant testified that the Tenant texted him to collect his personal belongings from the driveway. The Subtenant testified that on or around November 15, 2023 he retrieved some boxes, but the majority of his personal belongings were not at the driveway. The Subtenant testified that the Tenant blocked his communication and that the Tenant's daughter may be living in the Rental Unit, with his personal belongings.
- [9] The Subtenant testified that he paid November 2023 rent in full and wants the return of his rent as he was illegally evicted. The Subtenant testified that he did not receive an eviction notice from the Tenant and was not provided any notice. The Subtenant testified that he would like access to his belongings but he believes they may be ruined and is seeking \$7,000.00 in compensation.

Tenant's Evidence and Submissions

- [10] The Tenant submitted numerous documents into evidence including a written submission, photographs and messages between the parties.
- [11] The Tenant did not attend and did not have a representative at the hearing. As a result, the Tenant did not provide any oral submissions, rebuttals to the Subtenant's testimony and was not present for examination by the Officer and/or the Subtenant.

Analysis

- [12] The Application is made in accordance to section 75 of the *Act*. In such applications it is the person making the claim that has the burden to prove, on a balance of probabilities, any and all of their claims. This means that the party must provide the decision-maker sufficiently clear, convincing and cogent evidence to prove their claim.

Issue i. Is the Subtenant entitled to a return of rent?

- [13] Section 24 of the *Act* states:

24. Tenant's right of access protected

A landlord shall not unreasonably restrict access to a rental unit and common areas of the residential property by

- (a) *the tenant of the rental unit; or*
(b) *a person permitted in the rental unit and common areas by that tenant.*

- [14] Additionally, clauses 51(1), (2) and (4) of the *Act* state:

51. Termination only in accordance with Act

- (1) *A tenancy shall be terminated only in accordance with this Act.*

Termination by notice

- (2) *Where a notice of termination is given in accordance with this Act and the tenant vacates the rental unit in accordance with the notice, the tenancy ends on the termination date set out in the notice.*

Landlord's right to possession restricted

- (4) *A landlord shall not regain possession of a rental unit unless*
(a) *the tenant has vacated the rental unit or has abandoned the rental unit in accordance with section 42; or*
(b) *the Director has made an order directing the tenant to vacate the rental unit and the order has been sent to the sheriff for enforcement.*

- [15] The Officer concludes that the Subtenant is entitled to a return of rent. The Subtenant has provided sufficient evidence to conclude that on November 8, 2023 the Tenant acting as the Landlord told him not to return to the Rental Unit. The Subtenant's undisputed oral testimony and the documentary evidence provides context into the conversations the parties had between November 8 and November 15, 2023. The Subtenant did not wish to return to the Rental Unit in fear of escalating the issue, and when he did return with an RCMP officer, he was not provided access to the Rental Unit.

[16] The Officer concludes that the Tenant acting as the Landlord violated the Subtenant's right to access protected by section 24 of the *Act*. Additionally, the Tenant acting as the Landlord breached clauses 51(1), (2) and (4) of the *Act* by not serving the Subtenant with an *Eviction Notice* (Form 4(A) or (B)). Therefore, the Subtenant is entitled to a return of rent from November 9, 2023 to November 30, 2023 in the amount of **\$626.44**. This claim in the Application is allowed.

[17] Calculations on the return of rent:

Monthly Rent: \$850.00

Daily Rent: \$27.94 x 8 days (November 1-8, 2023) = \$223.56 - \$850.00 = \$626.44.

Issue ii. Is the Subtenant entitled to compensation?

[18] The Subtenant is seeking \$7,000.00 in compensation for his personal belongings. The Officer finds that the Subtenant provided an itemized list of his personal belongings and some photographs. However, the Subtenant did not provide any evidence to assist in quantifying or establishing that the total value of his personal belongings is \$7,000.00. Further, the Subtenant did not provide evidence and/or knowledge of the whereabouts of his personal belongings and the state of his personal belongings in his submissions and evidence. The Officer finds that the Subtenant is entitled to return to the Rental Unit and collect his personal belongings. However, the Officer concludes that there is insufficient evidence to award the Subtenant any compensation. Therefore, this claim in the Application is denied.

Conclusion

[19] The Application is allowed, in part.

[20] The Tenant acting as the Landlord shall return and pay the Subtenant \$626.44 forthwith.

[21] The Subtenant is entitled to return to the Rental Unit and retrieve his personal belongings forthwith.

[22] **Order LD24-039 will be served on the parties by e-mail on February 2, 2024.**

IT IS THEREFORE ORDERED THAT

A. The Tenant acting as the Landlord shall return and pay the Subtenant \$626.44 forthwith.

B. The Subtenant is entitled to return to the Rental Unit and retrieve his personal belongings forthwith.

DATED at Charlottetown, Prince Edward Island, this 2nd day of February, 2024.

(sgd.) Cody Burke

Cody Burke
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.