

## Introduction

- [1] On September 18, 2023, the Tenants filed a Tenant Application to Determine Dispute (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking a return of rent due to an unlawful rent increase pursuant to clause 50.(8) of the *Residential Tenancy Act* (the "Act").
- [2] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [3] On January 30, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). One of the Tenants participated in the hearing. The Landlord did not participate.

## Issue to be Decided

- i. Are the Tenants entitled to a return of rent due to an unlawful rent increase?

## Summary of the Evidence

- [4] In June of 2021, the Tenants and the Landlord entered into a written month-to-month tenancy agreement for the Residential Property. Rent was \$1,431.00 due on the first day of the month. A security deposit of \$1,350.00 was paid. The Tenants vacated the Residential Property on January 31, 2024.

## Tenants' Evidence and Submissions

- [5] The Tenants submitted several pages of evidence including banking documents, a written submission, and a copy of the Rental Office Order LD23-613.
- [6] The Tenant stated the Landlord unlawfully raised the rent from \$1,350.00 to \$1,395.00 per month from July 2022 until December 2023, totaling 18 months. In December 2023 the Rental Office issued Order LD23-613 as the Landlord was granted a rent increase for the rental unit. The rent was set to \$1,431.00 beginning January 2024, which was adjusted with the unlawful rent increase taken into consideration.
- [7] The Tenant stated during the previous hearing, the Landlord acknowledged he raised the rent because he was required to attend the rental unit frequently for issues. The Tenant stated this was not fair as the appliances in the rental unit were older and required more upkeep. The Tenant stated the Landlord did not have approval from the Rental Office for the July 2022 increase and he did not serve any paperwork on the Tenants for a rent increase.

## Landlord's Evidence and Submissions

- [8] The Landlord did not submit any evidence and he did not participate in the hearing.

## Analysis

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

- [9] The Tenants are seeking a return of rent due to an unlawful rent increase. The evidence establishes that in July 2022, the Landlord increased the rent from \$1,350.00 to \$1,395.00, and the Tenants paid the increased rent for 18-months. At that time the *Rental of Residential Property Act* (the "*Former Act*") was the law regarding landlord and tenant relationships.
- [10] Subsection 112.(2) of the current *Act* states a contravention of the *Former Act* may be dealt with as though the *Former Act* were still in force:

#### **112. Transitional - contravention**

*(2) A contravention of a provision of the former Act that occurred before the coming into force of this Act, but in respect of which no application, hearing or other proceeding was started before the coming into force of this Act, may be dealt with under the former Act as though that Act were still in force.*

- [11] With regards to rent increases, the *Former Act* states:

#### **22. Notice of rent increase**

*Every notice of increase of rent for residential premises shall*

*(a) be in writing in the form prescribed by regulation; and*

*(b) be served on the lessee*

*(i) in the case of a weekly agreement, at least three weeks before the date on which it is to take effect,*

*(ii) in the case of a monthly agreement, at least three months before the date on which it is to take effect.*

#### **23. Application for additional increase**

*(1) Except as provided in subsection (3) and notwithstanding the terms of any rental agreement, the amount of any rent increase between January 1 and December 31 of any year shall not exceed the percentage amount which is established by an order of the Commission and published in the Gazette.*

*(3) Where the lessor seeks a rent increase greater than the amount permitted by subsection (1), the lessor shall apply to the Director for approval of the proposed increase not later than ten days after notifying the lessee.*

#### **Form**

*(5) An application pursuant to subsection (3) or (4) shall be made on the form prescribed by regulation and a copy of the application shall be served on the other party.*

- [12] For the Landlord to properly increase the rent under the *Former Act* the Landlord would have had to first serve a rent increase notice (Form 10) to the Tenant. To increase the rent above the allowable he would also have had to file a rent increase application (Form 12), submit into evidence supporting documents (including a Form 15 financial statement), attend a Rental Office hearing, and obtain an order approving the rent increase. The evidence establishes that the Landlord did not comply with these requirements under the *Former Act*.
- [13] The Officer finds that the Tenants have provided sufficient evidence, specifically Order LD23-613, to establish that they are entitled to a return of rent of \$45.00 per month from July 2022 to December 2023, equaling 18 months, totaling \$810.00.

**Conclusion**

[14] The Application is allowed.

[15] The Landlord shall pay the Tenants \$810.00 on or before March 12, 2024.

**IT IS THEREFORE ORDERED THAT**

A. The Landlord shall pay the Tenants \$810.00 on or before March 12, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 12th day of February, 2024.

\_\_\_\_\_  
(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.