

Introduction

- [1] On December 5, 2023 the Landlord filed a modified *Landlord Application to Determine Dispute* (Form 2(B)) (the “Landlord’s Application”) with the Residential Tenancy Office (the “Rental Office”). The Landlord’s Application seeks a finding that the Tenant owes rent until the end of the fixed term tenancy agreement; to make a claim against the security deposit; and one months’ rent compensation for pain and suffering.
- [2] On December 5, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Tenant’s Application”) with the Rental Office. The Tenant’s Application seeks a finding that the Landlord breached clauses 23 and 28 of the *Residential Tenancy Act* (the “Act”).
- [3] All documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with clause 100(1) of the *Act*.
- [4] On January 16, 2024 a teleconference hearing was held at 11:00 a.m. before a Residential Tenancy Officer (the “Officer”). The Landlord appeared, representing themselves. The Tenant appeared, representing themselves.

Issues to be Decided

- i. Is the Tenant responsible to pay the full amount of rent remaining in the fixed term agreement?
- ii. Is the Landlord entitled to the security deposit?
- iii. Is the Landlord entitled to additional compensation?
- iv. Did the Landlord breach clauses 23 and/or 28(1) of the *Act*?

Summary of the Evidence

- [5] On February 8, 2023 the parties entered into a written fixed term tenancy agreement for the Rental Unit. The fixed term started on September 1, 2023 and was to end June 30, 2024. The Tenant moved into the Rental Unit on or around August 30, 2023. Rent is \$3,000.00 due on the first day of the month. A security deposit of \$3,000.00 was paid.
- [6] The Officer notes that at the time and date of the hearing, the Tenant continued to live in the Rental Unit. The Tenant expressed his intention to continue to live in the Rental Unit. However, after the conclusion of the hearing and before the issuance of this order, the Landlord contacted the Rental Office to advise that the Tenant has since vacated or abandoned the Rental Unit.
- [7] The Officer does not have any direct and/or affirmed evidence on the record to make a finding of fact on whether or not the Tenant has vacated and/or abandoned the Rental Unit. The Officer will make his findings as the record reflects at the date of the hearing.

Landlord’s Evidence and Submissions

- [8] The Landlord submitted numerous documents into evidence including written submissions, a copy of the tenancy agreement, photographs of the Rental Unit, advertisements for the Rental Unit, and communication between the parties.

- [9] The Landlord testified that the Tenant wanted to alter the tenancy agreement and leave earlier than the end date due to school. The Landlord testified that she never agreed to end the tenancy agreement and/or alter it. The Landlord testified that she felt pressured, intimidated and threatened by the Tenant. The Landlord testified that the Tenant sent numerous text messages regarding leaving early and/or subletting the tenancy.
- [10] The Landlord argued that the Tenant is not allowed to sublet the Rental Unit as per the tenancy agreement. The Landlord argued that out of good will, she advertised the Rental Unit and lowered the advertised rent to attempt to find a new tenant. The Landlord argued that it is the Tenant's responsibility to know how school schedule and/or requirements. The Landlord argued that the Tenant ought to have known before signing the fixed term agreement.
- [11] The Landlord argued that the Tenant advertised the Rental Unit without permission. The Landlord argued that she requested the Tenant remove a photograph from the advertisement and was met with hostility. Further, the Landlord argued that there were inaccuracies in the Tenant's advertisement (such as the description of specific pets being allowed).
- [12] The Landlord denied the Tenant's allegations of breaching the *Act*. The Landlord testified that she never entered the Rental Unit without consent and/or proper notice. The Landlord testified that the Tenant broke the Rental Unit's door. The Landlord testified that she has contacted contractors about having the door fixed. The Landlord testified that the current timeline is 6 months to repair the door due to a shortage of professionals in Prince Edward Island.
- [13] The Landlord is seeking a finding that the Tenant is required to pay rent until the end of June 2024 (the end of the fixed term), a finding that she can retain the full amount of the security deposit for damage to the Rental Unit, and 1 months' rent (\$3,000.00) in compensation for the stress caused by the Tenant's harassment regarding the sublet issue.

Tenant's Evidence and Submissions

- [14] The Tenant submitted numerous documents into evidence including written submissions, letters from his academic institution, communication between the parties, and photographs of the Rental Unit.
- [15] The Tenant admitted that the Rental Unit's door was jammed and he needed to use force to open it which caused a break. The Tenant argued that he did not kick the door.
- [16] The Tenant testified that once he knew his school schedule would require him to leave the province he requested that the tenancy agreement be converted to a month-to-month. The Tenant testified that he asked the Landlord in October 2023. The Tenant testified that he asked the Landlord about subletting the Rental Unit. The Tenant testified that the Landlord wanted to wait. The Tenant testified that he followed up with the Landlord as he was not provided an answer and argued it was not "badgering or harassment". The Tenant admitted to advertising the Rental Unit for sublet, but argued that it was advertised exactly as the advertisement he first saw. The Tenant argued that he has a right to sublet the Rental Unit.
- [17] The Tenant testified that the Landlord has entered the Rental Unit without proper notice and has taken photographs of his personal belongings without consent. The Tenant argued that the Landlord has not complied with an Environmental Health Report dated January 18, 2024. The Tenant argued that he was not provided access to the community mailbox for the Rental Unit, and brought up other concerns experienced during the tenancy. The Tenant argued that he is considering applying to the Rental Office to request the termination of the tenancy.

Analysis

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

Issue i. *Is the Tenant responsible to pay the full amount of rent remaining in the fixed term agreement?*

[19] Clause 55(3) of the *Act* states:

Notice for fixed-term tenancy

- (3) *A tenant may end a fixed-term tenancy by giving the landlord a notice of termination effective on a date that*
- (a) *is not earlier than one month after the date the landlord receives the notice;*
 - (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and*
 - (c) *is the day before the day that rent is payable under the tenancy agreement.*

[20] Further, clause 19(1) of the *Act* states:

19. *Tenant shall pay rent when due*

- (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.*

[21] The Officer finds that at the time of the hearing the Tenant still resided in the Rental Unit. The parties are in a fixed-term tenancy agreement which ends June 30, 2024. Rent is due on the first day of each month. The Officer cannot make a finding which would force the Tenant to pay outstanding rent which is yet owed. Further, the Officer notes that section 46 of the *Act* states:

46. *Mitigation of damages*

Where a tenant abandons the rental unit, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.

[22] In this case, the Officer finds that the evidence establishes that the Tenant has not abandoned the Rental Unit as of the date of the hearing. Further, the Landlord has not suffered any financial losses as a result. The Officer cannot effectively assess whether or not the Landlord has taken the appropriate steps of mitigation because such an analysis is premature based on the facts of this case. The Officer finds that the Tenant is responsible to pay rent when it is due, if rent is not paid on time then the Landlord may file an application seeking rent owing for the effective days owed with the reminder that the Landlord must show they have mitigated their damages. The claim for rent owing for the balance of the fixed term is denied.

Issue ii. Is the Landlord entitled to the security deposit?

[23] The Officer notes that clause 40(1) states:

40. Return of security deposit

- (1). *Except as provided in subsection (2) or (3), within 15 days' dater 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.*

[24] The Officer finds that the tenancy has not ended as of the date of the hearing. The Officer finds that a landlord can only apply to retain the security deposit *after* the tenancy has ended or has been assigned. In this case, there is no evidence before the Officer to come to the conclusion that the tenancy has ended. Therefore, the Officer cannot make a finding that the Landlord is entitled to retain the security deposit, and this claim is denied.

Issue iii. Is the Landlord entitled to additional compensation?

[25] The Landlord is seeking \$3,000.00 in pain and suffering. The Landlord alleges that the Tenant has threatened and harassed the Landlord, and disregarded the Landlord's wishes regarding advertising the Rental Unit. The Landlord argued that subletting is not permitted in the tenancy agreement, and that as a "good will" gesture, the Landlord allowed the Tenant to advertise.

[26] Clause 30(1)(2) and (3) of the Act state:

30. Tenant may sublet or assign rental unit with landlord's consent

- (1) *A tenant may, with the written consent of the landlord, sublet or assign a rental unit or part of a rental unit to another person.*

Landlord shall not unreasonably withhold consent

- (2) *A landlord shall not arbitrarily or unreasonably withhold consent to a sublet or assignment of a rental unit or part of it.*

Landlord may withhold consent

- (3) *A landlord may withhold consent if it appears to the landlord that the proposed sublet or assignment of the rental unit or part of it would result in an unreasonable number of persons occupying the rental unit or part of it.*

[27] Further, clause 5 of the Act states:

5. This Act cannot be avoided

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.

[28] The Officer finds that the evidence, specifically the text message and e-mail messages between the parties, does not establish that the Tenant was "threatening" and/or "harassing" the Landlord. Further, the Officer finds that the evidence establishes that no sublet or assignment has occurred and only advertisements have been made for the Rental Unit. Despite the disagreement between the parties regarding the description of the Rental Unit and/or the tenancy, the Officer finds that such a disagreement does not justify a monetary remedy for the Landlord. The claim for pain and suffering is denied. The Landlord's Application in its entirety is dismissed.

Issue iv. Did the Landlord breach clauses 23 and/or 28(1) of the Act?

[29] Clauses 23 and 28(1) of the Act state:

23. Landlord's right to enter rental unit restricted

A landlord shall not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

...

- (b) *the landlord provides written notice to the tenant at least 24 hours before the time of entry and the purpose of the entry is to*
 - (i) *carry out a repair or replacement or do work in the rental unit,*
 - (ii) *allow a potential mortgagee, insurer or appraiser of the residential property to view the rental unit, or*
 - (iii) *carry out an inspection of the rental unit, if*
 - (A) *the inspection is for the purpose of determining whether the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under this Act, and*
 - (B) *it is reasonable to carry out the inspection.*

28. Obligation to repair and maintain

(1) *A landlord shall provide and maintain the residential property in a state of repair that*

- (a) *complies with the health, safety and housing standards required by law; and*
- (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

[30] The Officer finds that the Tenant's evidence does not establish that the Landlord has breached clauses 23 and/or 28(1) of the Act. As it relates to clause 23, the Officer finds that the evidence suggests that the Landlord, to their best efforts, would provide notice to the Tenant. At times, the Landlord may have arrived earlier than the Tenant anticipated, however, the facts of this case do not warrant a finding that the Landlord's actions have reached a level which would conclude a breach of the Act. As it relates to clause 28(1) and the replacement of the Rental Unit's door, the Officer accepts the Landlord's evidence and testimony that the earliest a professional can replace and/or repair the Rental Unit's door is approximately in six months. The Officer finds that the Tenant's Application is dismissed.

Conclusion

[31] The Landlord's Application is dismissed.

[32] The Tenant's Application is dismissed.

IT IS THEREFORE ORDERED THAT

- A. The Landlord's Application is dismissed.
- B. The Tenant's Application is dismissed.

DATED at Charlottetown, Prince Edward Island, this 16th 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.