

Introduction

- [1] On December 21, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Tenant 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 Application, Notice of Hearing, and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [3] On March 7, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and the Tenant participated in the hearing.

Issue to be Decided

- i. Is the Tenant entitled to a return of rent due to an unlawful rent increase?

Summary of the Evidence

- [4] On May 1, 2023, the parties entered into a written fixed-term tenancy agreement for the Rental Unit, which is situated in a multi-unit building (the "Residential Property"). Rent is \$3,500.00 due on the first day of the month. A security deposit of \$3,500.00 was required and paid.

Tenant's Evidence and Submissions

- [5] The Tenant testified she signed the tenancy agreement with a property manager in February 2023 to move into the Rental Unit on May 1, 2023. A previous tenant, ("J.S."), attended the Rental Unit after she moved in and told the Tenant that J.S. was the previous tenant and she had moved out in December 2022. J.S. told the Tenant that she had been paying \$2,117.21 for rent and she provided the Tenant with a copy of her old tenancy agreement. The Tenant provided a copy of her current tenancy agreement and J.S.'s tenancy agreement into evidence.
- [6] The Tenant testified the Landlord unlawfully raised the rent after J.S. vacated and she should be paying the same rent as the previous tenant. The Tenant stated she also overpaid the security deposit, as it should have been only \$2,117.21, based on the previous rent for the Rental Unit.
- [7] The Tenant testified she is seeking a return of rent for the difference in the unlawful rent increase for each month she overpaid and a return of the overpayment of the security deposit.

Landlord's Evidence and Submissions

- [8] The Landlord testified he did not dispute the Tenant's testimony or her submitted evidence. The Landlord stated he was planning on moving into the Rental Unit but he had some health challenges. The Landlord stated he advised his property manager to rent the Rental Unit for \$3,500.00 per month. He stated he did not realize that rent was tied to the unit and he thought he could raise the rent between tenants.
- [9] The Landlord testified he provided a notice of rent increase to the previous tenants before they vacated. The notice indicated the rent would be increased by 10.8% beginning February 2023. He stated he issued the notice of rent increase pursuant to the Island Regulatory and Appeals Commission's (the "Commission") Order LD22-54. The Landlord stated the current rent the Tenant should be paying is \$2,345.86. The Landlord stated he will reimburse the Tenant the overpayments in rent and security deposit in the amount that is ordered.

Post Hearing Evidence

- [10] After the hearing, the Landlord provided the Officer with a copy of the “*Form 10 – Notice of Increase in Rent of Residential Premises*” (the “Notice of Increase”) that he served to the previous tenants. The Notice of Increase was dated October 27, 2022, and a rent increase of \$228.65 per month was to take effect on February 1, 2023, making the rent \$2,345.86. A copy was provided to the Tenant by the Officer.

Analysis

Issue i: Is the Tenant entitled to a return of rent due to an unlawful rent increase?

Rent

- [11] The Application is made pursuant 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 claims made. This means that the party must provide the decision-maker sufficiently clear and convincing evidence to prove their claim(s).

- [12] Subsections 47.(1) and (2) of *Part 3* the *Act* state:

A landlord shall not increase rent except in accordance with this Part.

The obligations of a landlord under this Part run with the rental unit and not the tenant.

- [13] Subsections 49.(1), and (4) of the *Act* state:

No landlord shall increase the rent charged for a rental unit by more than the allowable annual increase, except in accordance with section 50.

Notwithstanding subsections (2) and (3), the guideline for the 2023 calendar year is zero per cent.

- [14] Subsection 50.(1) of the *Act* states:

A landlord may request the Director’s approval of a rent increase in an amount that is greater than the amount calculated under subsection 49(2) by making an application to the Director under section 75.

- [15] Subsection 50.(8) of the *Act* states:

Where a landlord collects a rent increase that does not comply with this Part, the tenant may make an application to the Director under section 75 to recover the amount of the increase.

- [16] Subsection 85.(1)(b) of the *Act* states:

*After hearing an application, the Director may make an order
(b) directing the payment or repayment of money from a landlord to a tenant or
from a tenant to a landlord.*

- [17] The Landlord testified he served the previous tenants the Notice of Increase which indicated rent would be raised on February 1, 2023, by \$228.65, making the rent \$2,345.86. The Landlord stated he served the Notice of Increase pursuant to the Commission’s Order LD22-54, which was issued on September 20, 2022.

[18] Order LD22-54 states in part:

The allowable percentage rent increase for the period January 1, 2023 to December 31, 2023, for all premises heated with furnace oil shall be ten point eight (10.8%) percent.

[19] In response to Order LD22-54, the Legislative Assembly passed *Bill No. 80 – An Act to Amend the Rental of Residential Property Act (NO. 2)* on December 1, 2022. *Bill No. 80* limited the maximum allowable rent increase to 0% for 2023. This meant that any Notice of Increase previously provided to tenants for 2023 was no longer valid. On April 8, 2023, the current *Act* was proclaimed as law, and the 0% allowable remained in effect pursuant to subsection 49.(4) of the *Act*.

[20] *Bill No. 80 – An Act to Amend the Rental of Residential Property Act (NO. 2)*, states:

Notice of rent increase for 2023

(2) Notwithstanding subsection (1), a notice provided by a lessor of a rent increase pursuant to Order LR22-54 of the Commission that was stated to take effect in the period between January 1, 2023, and December 31, 2023, is of no force or effect.

[21] The Officer notes the effect of *Bill No. 80* was to void all Notices of rent increases served to tenants for 2023. The Officer finds that the Notice of Increase, dated October 27, 2022, is invalid and the Landlord was not able to increase the rent in 2023 without applying to the Director. The Officer finds there is no evidence the Landlord had applied for or was granted a rent increase by the Director.

[22] The Officer finds the Tenant has provided sufficient evidence to establish that the Landlord has collected a rent increase that does not comply the *Act* and the Tenant is entitled to a return of rent in the amount of \$1,382.79 per month (\$3,500.00 - \$2,117.21) for eleven months (May 2023 – March 2024), totaling **\$15,210.69**.

[23] The Officer further finds that the authorized rent for the Rental Unit is \$2,117.21 per month until the rent is properly increased in accordance with the *Act*.

Security Deposit

[24] Subsection 14.(3) of the *Act* states:

A landlord shall not require or accept a security deposit that is greater than

(a) in the case of a tenancy agreement where the rent is paid weekly, the equivalent of one week's rent; and

(b) in any other case, the equivalent of one month's rent.

[25] Subsection 14.(4) of the *Act* states:

Where a landlord accepts a security deposit that is greater than the amount permitted under subsection (3), the tenant may deduct the overpayment from rent or make an application to the Director under section 75 to recover the overpayment.

[26] The Officer notes the Tenant is in a fixed-term tenancy agreement, which would fall under subsection 14.(3)(b) of the *Act*. The Tenant was only required to pay a security deposit not greater than one month's rent, which the Officer has already found should be \$2,117.21. The Officer therefore finds that the Tenant has provided sufficient evidence to establish that she overpaid the security deposit and that she is entitled to a return of the overpayment in the amount of **\$1,382.79** (\$3,500.00 – \$2,117.21).

Conclusion

- [27] The Application is allowed.
- [28] The Landlord shall repay the Tenant the overpayment of rent and the overpayment of the security deposit totaling \$16,593.48 by April 30, 2024.
- [29] The authorized rent for the Rental Unit is \$2,117.21 per month until the rent is properly increased in accordance with the *Act*.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall repay the Tenant the overpayment of rent and the overpayment of the security deposit totaling \$16,593.48 by April 30, 2024.
- B. The authorized rent for the Rental Unit is \$2,117.21 per month until the rent is properly increased in accordance with the *Act*.

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