

Introduction

- [1] On March 4, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Tenant seeks a monetary order against the Landlord regarding electricity services paid by the Tenant.
- [2] On March 12, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on March 26, 2024, along with a copy of the Application.
- [3] On March 20, 2024 the Rental Office emailed the parties an evidence package. Both parties had submitted documentary evidence.
- [4] On March 26, 2024 a teleconference hearing was held before the Officer for determination of the Application. The Tenant and the Representative confirmed receipt of the evidence package at the hearing.

Issue to be Decided

- i. Must the Landlord return to the Tenant the money paid by the Tenant for electricity services?

Summary of the Evidence**Tenant's Evidence**

- [5] The Tenant's evidence is summarized as follows.
- [6] The Tenant moved into the Unit in October or November of 2021 pursuant to an oral, month-to-month tenancy agreement with the former owner of the property. The rent for the Unit was \$1,300.00 per month, due on the first day of the month. Heat and electricity were two of the services included in the rent. The Unit was heated by a furnace oil system. The Tenant paid a \$500.00 security deposit to the former owner.
- [7] The Landlord later purchased the Unit. During the summer of 2023 the Landlord had two heat pumps installed in the Unit.
- [8] On December 27, 2023 the Tenant signed a written tenancy agreement for the Unit with electricity changing to an excluded service as of February 2024, to be paid for by the Tenant. However, the Tenant's understanding of the rental laws is that the rent could only be increased by 3.0% in 2024.
- [9] On February 27, 2024 the Tenant paid the Landlord \$315.00 for electricity services. The Tenant seeks the return of these funds.

Landlord's Evidence

- [10] The Representative's evidence is summarized as follows.
- [11] The Representative does not know the details of the Unit's furnace oil cost prior to the Landlord purchasing the property. On May 31, 2023 the Landlord purchased the Unit from the former owner of the property.
- [12] In July or August of 2023 the Landlord had two heat pumps installed in the Unit.
- [13] The Tenant was given notice that he would be responsible for the electricity cost of the Unit. On December 27, 2023 the parties entered into a written tenancy agreement. In Schedule "D" the parties made the following agreement:

*“Hydro will be the responsibility of the tenant as of February 1st, 2024.
Rent is you rent, Rent receipts will not have hydro included on them.
Rent is \$1300.xx per month plus hydro as of February 1st, 2024...”*

[14] The Landlord provided evidence regarding the number of people occupying the Unit.

Analysis

[15] The transfer of the electricity cost from the Landlord to the Tenant with the monthly rent remaining the same is a rent increase.

[16] Part 3 of the *Residential Tenancy Act* (the “*Act*”) sets out the rules regarding rent increases.

[17] Prince Edward Island’s 2024 rent increase limit is 3.0%. Therefore, if the Landlord had provided the Tenant with a proper notice, a *Form 8 – Tenant Notice of Annual Allowable Rent Increase*, the Unit’s rent could have been increased to \$1,339.00.

[18] The Landlord could also have sought a maximum additional 3.0% rent increase (6.0% total) by filing the proper application with the Rental Office, a *Form 9 – Landlord Application to Request Additional Rent Increase*. If such an application was approved by the Rental Office after a hearing, then the rent would have been increased to a maximum amount of \$1,378.00 (6.0%).

[19] Section 5 of the *Act* states:

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.

[20] Any agreement by the Tenant to paying the electricity cost, which had been a service included in the rent, was void and of no effect. Therefore, the Landlord must return to the Tenant the \$315.00 paid by the Tenant for electricity.

[21] The *Act* does not permit rent increases based upon the number of persons occupying a rental unit.

[22] The Officer also notes that on Prince Edward Island rent runs with the rental unit and not the tenant (section 47). This means that when a tenant moves out of a rental unit a landlord cannot automatically increase the rent for the unit and must instead comply with the rent increase rules in Part 3 of the *Act* (sections 47 to 50).

Conclusion

[23] The Application is allowed. The Landlord will pay the Tenant \$315.00 by the timeline below. The monthly rent for the Unit is \$1,300.00, including the cost of electricity, until the rent is increased in accordance with the *Act*.

IT IS THEREFORE ORDERED THAT

1. The Landlord will pay the Tenant \$315.00 by April 16, 2024.
2. The monthly rent for the Unit is \$1,300.00, including the cost of electricity, until the rent is increased in accordance with the *Act*.

DATED at Charlottetown, Prince Edward Island, this 27th day of March, 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.