

Introduction

- [1] On January 23, 2024, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed to request compensation as a result of an eviction pursuant to clause 72 of the *Residential Tenancy Act* (the "Act").
- [2] All documents (including the Application, the *Notice of Hearing* and the *Evidence Package*) were properly served pursuant to clause 100(1) of the *Act*.
- [3] On March 5, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and Tenant participated in the hearing.

Issue to be Decided

- i. Is the Tenant entitled to compensation pursuant to clause 72 of the *Act*?

Summary of the Evidence

- [4] In July of 2023, the Landlord purchased the building (the "Residential Property") containing the Rental Unit. The Tenant had a written month-to-month tenancy agreement with the previous landlord and the parties continued this agreement. Rent was \$1,100.00 due on the first day of the month. A security deposit of \$1,100.00 was paid. The Tenant vacated on January 14, 2024, as a result of an eviction notice for personal occupation by the Landlord.

Tenant's Evidence and Submissions

- [5] The Tenant testified that on December 9, 2023, she was served with an eviction notice for May 15, 2024, as the Landlord wanted possession of the Rental Unit for herself. The Tenant was able to find a new apartment and she provided notice to the Landlord on January 3, 2024, and vacated on January 14, 2024.
- [6] The Tenant testified section 72 of the *Act* states the Landlord is required to provide her with one month's rent and moving expenses if she was evicted for the Landlord's own use. She stated she believes she is entitled to compensation even though she provided early notice, as it is hard to find rental units in this housing market and she could not wait until May to vacate. She stated section 69.(3) should still apply for being evicted for Landlord's own use, even though it does not mention section 72 explicitly.
- [7] The Tenant testified she tried to keep her moving costs low and hired inexpensive movers. She also paid her daughter to help her move as she required further assistance. The Tenant submitted receipts and invoices into evidence showing that it cost her \$418.91 in moving expenses, which included hiring movers, renting a U-Haul, gas, boxes, and hiring her daughter as a driver.

Landlord's Evidence and Submissions

- [8] The Landlord testified section 69.(1) states a tenant can end a tenancy early by providing proper notice, which the Tenant did. She stated section 69.(3) does not state a tenant can receive compensation for being evicted for Landlord's own use if they do provide early notice. She stated a tenant can only receive compensation when they provide early notice if they are evicted under section 70, which is only for repairs or renovations. The Landlord stated it also put her into financial hardship when the Tenant vacated early, as she was counting on the extra rental income until May.

Analysis

Is the Tenant entitled to compensation pursuant to clause 72 of the Act?

- [9] 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 claims made. This means that the party must provide the decision-maker sufficiently clear and convincing evidence to prove their claim(s). The relevant law is as follows:

Landlord's notice for landlord's use of property

62. A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by

(a) the landlord.

Tenant may end tenancy early following notice

69.(1) Where a landlord gives a tenant a notice of termination of a tenancy under section 62, 63, 64, 66 or 67, the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice of termination on a date that is earlier than the effective date of the landlord's notice; and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

Right to compensation

69.(3) A notice of termination under this section does not affect the tenant's right to compensation under section 70.

Compensation for personal use

72. A landlord shall compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to one month's rent plus reasonable moving expenses in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant.

Subsection 6.(1) of the Residential Tenancy Regulations (the "Regulations") states: For the purposes of subsections 70(1) and (2) and sections 71 and 72 of the Act, reasonable moving expenses are the lesser of the actual expenses of the move or one month's rent.

- [10] The Island Regulatory and Appeals Commission (the "Commission") noted in Order LR24-12:

While section 69 may not make specific reference to an eviction under section 62 triggering compensation under section 72, neither section 69 nor the Act in general contain a provision that would result in a tenant's right to compensation for a section 62 eviction being lost as a result of the tenant, subsequent to receiving the notice of eviction, engaging the process under section 69 for terminating the tenancy early. The wording of section 72 is clear in that the Tenant's entitlement to compensation is tied to the fact that the Tenant was served with the notice of eviction by the Landlord who wanted possession of the rental unit for her own use.

There is no provision in the Act which makes reference to such compensation being negated by a tenant serving a notice of early termination to the landlord. In this case, the parties agree that the Tenant received a notice of termination under section 62 of the Act because the Landlord required the property for her own use. Given that the Tenant received such a notice, section 72 applies and the tenant is entitled to compensation.

- [11] The parties agreed the Tenant was evicted for own use by the Landlord under section 62 of the Act. Although the Tenant did provide early notice, the Commission has found that a tenant's right to compensation is not "negated" by providing early notice. Therefore, section 72 applies and the Officer finds the Tenant is entitled to compensation.
- [12] The Officer finds the Tenant has established she is entitled to compensation in the amount of one month's rent equaling \$1,100.00. The Officer also finds the Tenant has established she is entitled to moving expenses in the amount of \$418.91 and that the moving expenses are in accordance with the *Regulations*. The Officer finds the Tenant is entitled to total compensation in the amount of \$1,518.91 and the Application is allowed.

Conclusion

- [13] The Application is allowed.
- [14] The Landlord shall pay the Tenant \$1,518.91 by April 30, 2024.
- [15] This Order will be served to the parties by email.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$1,518.91 by April 30, 2024.

DATED at Charlottetown, Prince Edward Island, this 3rd day of April, 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.