

Introduction

- [1] On January 31, 2024 the Landlord's representative (the "Representative") filed a *Landlord Application to Determine Dispute (Form 2(B))* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Representative filed the Application to make a claim against the security deposit pursuant to clause 40(1) of the *Residential Tenancy Act* (the "Act").
- [2] On February 14, 2024 the Representative amended the Application. The amendment includes a request that the Tenants pay additional compensation above the full security deposit amount. The Landlord is seeking to make a claim against the full amount of the security deposit \$1,500.00 plus interest, and additional compensation in the amount of \$1,000.00.
- [3] All documents (including the Application, the *Notice of Hearing* and the *Evidence Package*) were properly served in accordance to clause 100(1) of the *Act*.
- [4] On March 26, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Representative appeared, representing the Landlord at the hearing. The Tenants did not appear. The hearing was delayed (10) ten minutes and the Rental Office contacted the Tenants without success. However, one of the Tenants' family member called into the hearing, and requested to represent one of the tenants. The Officer permitted the representation, and the hearing proceeded in the absence of the Tenants. The other two tenants did not have representation and did not participate in the proceeding.

Issues to be Decided

- i. Is the Landlord entitled to retain the security deposit?
- ii. Is the Landlord entitled to compensation above the security deposit?

Summary of the Evidence

- [5] On August 17, 2023 the parties entered into a written, fixed-term tenancy agreement. The fixed-term was from September 1, 2023 to August 31, 2024. The parties include the Representative who operates as the property manager for the Landlord, and the Tenants (including (4) four individuals operating in a joint tenancy). Rent was \$2,500.00 payable on the first day of the month. A security deposit of \$1,500.00 was paid at the beginning of the tenancy.
- [6] The Representative named three of the four tenants in the Application. The Representative stated that the fourth tenant vacated the Rental Unit by mutual agreement on November 30, 2023. The Representative stated that she relied on the information in her internal software, and noted that the rent for the remaining months was paid by the remaining three tenants.

Landlord's Evidence and Submissions

- [7] The Representative submitted 21-pages of documents into evidence including: a copy of the tenancy agreement, a copy of the *Tenant Notice of Termination (Form 3)*, a copy of the *Landlord Condition Inspection Report (Form 5)*, an advertisement of the Rental Unit, and a copy of the new tenancy agreement with the new tenant.
- [8] The Representative testified that on December 28, 2023 she received the Form 3 from the Tenants. The Representative testified that the Tenants vacated on January 18, 2024. The Representative testified that an inspection was completed, with the results of that inspection detailed in the Form 5 dated January 18, 2024 and signed by one of the three tenants.

- [9] The Representative testified that the security deposit is being retained to cover a portion of rent for February 2024. The Representative is seeking the remaining balance of rent in the amount of \$1,000.00.
- [10] The Representative argued that the Tenants failed to provide sufficient notice under the *Act* for a fixed-term agreement. Further, the Representative argued that proper mitigating steps were taken, with ads being created immediately and a new tenant found for March 1, 2024. The Representative argued that the Landlord lost February 2024's rent in the amount of \$2,500.00.

Tenants' Evidence and Submissions

- [11] The Tenants did not submit any documents or written submissions into evidence. The Tenants did not participate at the hearing to provide any oral testimony and/or submissions as it relates to the Application.
- [12] However, one of the Tenants' family members participated at the hearing and represented that specific tenant's interests. The representative testified that the tenant she is representing vacated in the middle of December 2023. The representative argued that there were concerns that the three tenants would be on the hook for the owing amount and the fourth tenant would not be liable.
- [13] The representative did not dispute the Representative's argument about owing rent for February 2024.

Analysis

- [14] The Application is made in accordance with clause 75 of the *Act*, and is seeking to make a claim against the security deposit, pursuant to clause 40(1) of the *Act*. The Landlord is seeking additional compensation above the amount of the security deposit. The relevant law is as follows:

40. Return of security deposit

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

85. Powers of the Director

- (1) *After hearing an application, the Director may make an order*

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.

[15] Further, clauses 28(3), (4) and 55(3) of the Act states:

28. Tenant responsible for ordinary cleanliness

(3). *A tenant is responsible for*

- (a) *Ordinary cleanliness of the rental unit and all areas of the residential property used exclusively by the tenant, except to the extent that the tenancy agreement expressly requires the landlord to clean it; and*
- (b) *Proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.*

Tenant responsible for undue damage

(4). *A tenant of a rental unit shall repair, in a good and professional manner, undue damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

Tenant not responsible for reasonable wear and tear

(5). *A tenant is not required to make repairs for reasonable wear and tear to the rental unit or common areas of the residential property.*

55. 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.*

[16] The Landlord initiated the Application as required under the Act. The Landlord bears the onus of proving its claim on a balance of probabilities. The courts have interpreted this standard to mean that a decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim and the value of the alleged damage.

February 2024 rent in the amount of \$2,500.00

[17] The Officer finds that the undisputed evidence establishes that the parties were under a fixed-term tenancy agreement, which did not expire until August 31, 2024. Clause 55(3) of the Act requires a tenant to give a landlord notice that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day that rent is payable. In this case, the evidence establishes that the Tenants gave a Form 3 to the Representative on December 28, 2023, with notice of vacate for February 1, 2024. However, the undisputed testimony provided by the Representative is that all the tenants vacated by January 18, 2024. The Officer finds that the Tenants did not comply with clause 55(3) of the Act.

- [18] The Officer notes that despite the Tenants' non-compliance, the Landlord has a duty to mitigate. Clause 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.

- [19] The Officer finds that the Representative provided evidence to establish that the proper mitigation steps were taken. The Officer notes that the Representative provided documentary evidence of advertisements for the Rental Unit. Further, the Representative testified that a new tenant was found for March 1, 2024, and the tenancy agreement for that new tenant with redactions was submitted into evidence. Therefore, the Officer concludes that the Tenants did not comply with clause 55(3), and the Landlord has taken proper mitigation steps. The Landlord has a valid claim to retain the full amount of the security deposit and interest for rent for February 2024. This claim is allowed.
- [20] Further, the Officer finds that based on the same reasons as noted above, that the Landlord has provided sufficient and convincing evidence that the Landlord is entitled to additional compensation above the security deposit to cover the remaining balance for February 2024 rent. The calculations are provided below.
- [21] The Officer notes that the tenant's representative requested additional time to pay any outstanding amount owed. The Representative was agreeable to this request. The parties requested the Officer to consider the additional time to pay the outstanding amount to 60 days.
- [22] The accrued interest on the \$1,500.00 security deposit is \$23.39.
- [23] In accordance to clause 14(9) of the *Act*:

Interest rate

A landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord.

- [24] The interest accrued is calculated to the date this Order is issued.

Conclusion

- [25] The Application is allowed. The Landlord shall retain the full amount of the security deposit and interest in the amount of \$1,523.39.
- [26] The Tenants shall pay the Landlord \$976.61 on or before June 9, 2024.
- [27] **This Order will be served to the parties by e-mail.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$1,523.39 from the security deposit and interest.
- B. The Tenants shall pay the Landlord \$976.61 on or before June 9, 2024.

DATED at Charlottetown, Prince Edward Island, this 10th day of April, 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.