

Introduction

- [1] On December 20, 2023 the Landlord filed a first *Landlord Application to Determine Dispute (Form 2(B))* (the “First Application”) with the Residential Tenancy Office (the “Rental Office”). The First Application was filed for outstanding rent in the amount of \$2,550.00 and outstanding utilities in the amount of \$1,664.30.
- [2] On January 2, 2024 the Landlord filed a second *Landlord Application to Determine Dispute (Form 2(B))* (the “Second Application”) with the Rental Office. The Second Application was filed to claim against the security deposit.
- [3] On January 5, 2024 the Landlord filed a third *Landlord Application to Determine Dispute (Form 2(B))* (the “Third Application”) with the Rental Office. The Third Application was filed seeking additional compensation above the security deposit amount. The Landlord is seeking \$1,019.86 in compensation.
- [4] The First Application, the Second Application, and the Third Application (collectively, the “Applications”) seek compensation in the total amount of \$5,234.16 (\$2,550.00 + \$1,664.30 + \$1,019.86).
- [5] All documents (including the Applications, the *Notice of Hearing (the first, second, and third Notice of Hearing)*, and the *Evidence Package*) were properly served in accordance to clause 100(1) of the *Act*. The Officer notes that the hearing was rescheduled on numerous occasions at the request of the Tenant.
- [6] On April 2, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord appeared on her own behalf and participated. One of the Tenants appeared (the “Tenant”) on her own behalf, and represented one of the other Tenants.
- [7] Another occupant (the “Subtenant”) provided witness testimony at the hearing. Although the Officer permitted the Subtenant to provide evidence, the Subtenant is not named as a party in this Order and does not have a right to appeal.

Issues to be Decided

- i. Is the Landlord entitled to outstanding rent and utilities?
- ii. Is the Landlord entitled to retain the security deposit?
- iii. Is the Landlord entitled to compensation above the security deposit?

Summary of the Evidence

- [8] On July 1, 2023 the parties entered into a written, fixed-term tenancy agreement for the period of July 1, 2023 to December 31, 2023. The parties included the Landlord and the Tenants (5 individuals in a joint tenancy). Rent was \$2,550.00 due on the first day of the month. A security deposit of \$2,550.00 was paid on July 1, 2023.
- [9] The *Evidence Package* includes 228-pages of documents submitted by the Landlord, the Tenants and the Subtenant.

Landlord's Evidence and Submissions

- [10] The Landlord stated that she had a tenancy agreement with the Tenants. In September 2023 the Tenant requested two people replace her on the tenancy agreement. The Landlord stated that she requested references, and she knew that another one of the Tenants was also seeking to be replaced. The Landlord stated that despite allowing the Tenant(s) to find replacement tenants, no permission was given to assign or sublet the tenancy. The Landlord stated that she was not aware of all the occupants living in the Rental Unit.
- [11] The Landlord stated that the subtenants and occupants did not pay December 2023 rent. The Landlord stated that the Tenants were responsible for December 2023 rent. The Landlord submitted a text message into evidence dated December 2, 2023. The text message asked the Tenant to cover the rent and described to the Tenant a conversation with one of the subtenants about a deposit provided to the Tenant (page 25 of *Evidence Package*).
- [12] The Landlord stated that the tenancy ended December 31, 2023 and she is unsure the date all the Tenants and subtenants vacated. The Landlord stated that the Tenants are responsible for December 2023 rent and the outstanding utilities. The Landlord stated that \$1,664.30 is owing for two electricity bills, and two former oil bills with a surcharge. The Landlord stated that it is the Tenants' responsibility to refill the oil tank before vacating as a term of the tenancy agreement. The Landlord stated that another subtenant became the primary contact, but no new agreement was signed because the subtenants disagreed with the refill oil tank requirement.
- [13] The Landlord stated that she attempted to explain the sub-tenancy arrangement to the Tenant through text message (pages 26-35 of *Evidence Package*). The Landlord stated she is seeking additional compensation above the security deposit in the amount of \$1,019.86. The Landlord submitted that there was significant lawn damage caused by parked cars. The Landlord stated that an estimate of the cost to fix the damage to the lawn was \$776.25.
- [14] The Landlord stated that she had to replace the mailbox key, which cost \$29.00. The Landlord stated that she needed to clean the Rental Unit, which cost \$140.00 (\$20.00 x 7 hours), and cleaning supplies cost \$18.00. The Landlord stated that it cost \$25.00 to replace a door knob, and \$31.61 to fix wooden trim. The Landlord submitted photographs into evidence of the lawn, and the condition of the Rental Unit as of December 31, 2023.
- [15] The Landlord is seeking to retain the security deposit and an order for payment of additional compensation of \$2,684.41.

Tenants' and Subtenant's Evidence and Submissions

- [16] The Tenant stated that she vacated the Rental Unit on September 1, 2023 and provided the Landlord with two people to replace her. The Tenant submitted text message conversations with the Landlord into evidence. The Tenant submitted an e-transfer payment of \$1,000.00 dated July 1, 2023. The e-transfer was to one of the other Tenants. The Tenant submitted a page from the tenancy agreement, with clause 2(a) circled, outlining that if the Tenants move out, or if a new tenant moves in, a new lease will need to be signed. The Tenant stated that she believed after she vacated the Rental Unit, a new lease was signed with the new people, and she no longer had any responsibility.
- [17] The Subtenant submitted a written submission into evidence (page 144 of *Evidence Package*). The Subtenant testified that he paid the Tenant the security deposit, and believed that was to cover December 2023 rent. The Subtenant testified that he never signed a new agreement, and was never told about his responsibility to refill the oil tank. The Subtenant testified that from September to December 2023 there were no issues, and he paid his rent and utilities to another subtenant.

- [18] The Subtenant submitted into evidence a transaction receipt of the \$975.00 security deposit payment to the Tenant on August 7, 2023. The Subtenant submitted e-transfer receipts for September, October and November 2023 rent. The e-transfers were sent to other Tenants, and subtenants throughout the months. The Subtenant also submitted receipts of e-transfers for electricity bills.
- [19] One of the other Tenants submitted a written submission into evidence (page 153 of *Evidence Package*). The written submission states that the Landlord did not provide any update regarding the subtenants refusing to sign a new agreement. The other Tenant vacated the Rental Unit on September 20, 2023 and believed he had no further obligations under the tenancy. On December 19, 2023 he received a message from the Landlord requesting December 2023 rent. He believes it is unfair that he is being asked to pay rent after vacating three months earlier. He submitted receipts, text message conversations and e-transfers into evidence.

Analysis

- [20] The Applications were made in accordance with clause 75 of the *Residential Tenancy Act* (the "Act") and are seeking to make a claim against the security deposit, pursuant to clause 40(1) of the Act. Further, the Applications are seeking an order for rent owed and additional compensation above the total 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.*

- [21] Further, clauses 19(1), 28(3), (4), (5) and 30(6) of the Act state:

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.*

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.*

30. *Consequences of subletting*

- (6) *Where a tenant has sublet a rental unit to another person*
- (a) *the tenant remains entitled to the benefits and is liable to the landlord for the breaches of the tenant's obligations under the tenancy agreement or this Act during the subtenancy; and*
 - (b) *the subtenant is entitled to the benefits and is liable to the tenant for the breaches of the subtenant's obligations under the subletting agreement or this Act during the subtenancy.*

- [22] The Landlord initiated the Applications under the *Act*. The Landlord bears the onus of proving her 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(s) and the value of the alleged damages.

The Tenancy

- [23] The parties provided conflicting arguments regarding the tenancy and the liabilities which flow from the tenancy agreement. Both parties submitted numerous text message conversations into evidence to assist their respective positions. The Officer notes that the tenancy agreement was a single, written, fixed-term agreement, and the Tenants were all joint and severally liable. Throughout the tenancy, some of the Tenants sought replacements as they were vacating the Rental Unit. The evidence is unclear whether these replacements were intended to be an assignment or a sublet of the tenancy. The Landlord attempted to sign a new tenancy agreement with these individuals, however, the Landlord was unsuccessful as there was a dispute over the terms of the agreement. Further, the Officer notes that the individuals directly paid the Tenant(s) a security deposit.
- [24] After considering the testimony of the parties, and reviewing the text messages submitted into evidence, the Officer finds that the individuals who moved in after the Tenants vacated were subtenants. Clause 30(6) of the *Act* clarifies the responsibilities of the parties when subletting.

Outstanding rent and utilities in the amount of \$4,214.30

- [25] The evidence establishes that December 2023 rent was not paid and remains outstanding, in the amount of \$2,550.00. The Officer finds that the Tenants and the subtenants who were living in the Rental Unit in December 2023 did not pay rent when it was due on the first day of the month. The Subtenant believed that the deposit paid to the Tenants would cover December rent because they were vacating at the end of December 2023. **Rent owing claim allowed in the amount of \$2,550.00.**
- [26] The tenancy agreement requires the Tenants to fill the oil tank at the end of the tenancy and electricity was the responsibility of the Tenants. The Landlord claims \$121.37 from October 5 to November 3, 2023, and \$124.12 from November 3 to December 5, 2023 in outstanding electricity costs. The Landlord did not provide those electricity bills into evidence. However, the Officer finds that the Tenants and the Subtenant did not dispute that electricity was their responsibility as the tenancy agreement requires. The Officer finds that the Landlord is entitled to this claim. **Electricity costs in the amount of \$245.49.**

- [27] The Landlord claims \$624.95 for a former oil refill expense, along with an \$85.00 emergency surcharge. The Landlord also claims \$708.86 for a former oil refill expense. The Officer finds that the Landlord submitted a receipt dated December 15, 2023 in the amount of \$624.95. However, the Landlord did not submit any corroborating receipts to establish the \$85.00 emergency surcharge, or the additional \$708.86 refill expense. Therefore, the Officer finds that the Landlord is entitled to a claims for \$624.95. **Claim allowed in the amount of \$624.95.**

Additional Compensation in the amount of \$1,019.86

- [28] The Landlord claims that the Tenants and/or the subtenants damaged the Rental Unit's lawn. The Landlord submitted into evidence an estimate in the amount of \$776.86 to repair the lawn, and photographs of the damage to the lawn. The Officer finds that the Landlord has established that the lawn was damaged and requires landscaping because of parked cars on the lawn. The Officer notes that the Subtenant's testimony detailed that there would be five cars parked at a time at the Rental Unit. The Officer notes that no *before* photographs of the lawn were submitted into evidence, and that the evidence before the Officer is an estimate, and not the amount paid by the Landlord as of the date of the hearing. After weighing the evidence, the Officer finds that the Landlord is entitled to the amount of \$776.86 for the lawn repair. **Claim allowed in the amount of \$776.86.**
- [29] The Landlord is claiming \$29.00 for the cost to replace the mailbox key, cleaning and supplies in the amount of \$158.00, replacement of a door knob in the amount of \$25.00 and replacement of wooden trim in the amount of \$31.61. The Landlord submitted into evidence photographs of the Rental Unit. The Officer notes that there were no before photographs provided into evidence. The Officer finds that there was no disputing evidence regarding the condition of the Rental Unit by the Tenant or the Subtenant. The Officer finds that the photographs establish that the Rental Unit was left in a condition below ordinarily clean. Further, the direct testimony from the Landlord and the photographs demonstrate some undue damage to the Rental Unit.
- [30] The Officer finds that the Landlord did not provide receipts or invoices into evidence to assist establishing her costs. The Officer finds that the Landlord is entitled to \$158.00 for cleaning and cleaning supplies. **The claim is allowed in the amount of \$158.00.**
- [31] The Landlord has established a valid claim in the amount of \$4,355.30 (\$2,550.00 + \$245.49 + \$624.95 + \$776.86 + \$158.00).
- [32] The Officer finds that the Landlord has established a valid claim to retain the full amount of the security deposit. Further, the Officer finds that the Landlord has established that she is entitled to additional compensation above the total amount of the security deposit.
- [33] The accrued interest on the \$2,550.00 security deposit is \$49.07.
- [34] The calculations are as follows:

Item	Amount
Rent Arrears & Damage / Cleaning Liability	\$4,355.30
Security Deposit & Interest	(\$2,599.07)
Additional Compensation Awarded to Landlord	\$1,756.23

Conclusion

- [35] The Applications are allowed, in part. The Landlord shall retain the full amount of the security deposit and interest, in the amount of \$2,599.07.
- [36] The Tenants shall pay the Landlord \$1,756.23 on or before May 10, 2024.
- [37] **This Order will be served to the parties by e-mail.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$2,599.07 from the security deposit and interest.
- B. The Tenants shall pay the Landlord \$1,756.23 on or before May 10, 2024.

DATED at Charlottetown, Prince Edward Island, this 17th 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.