

Introduction

- [1] On February 20, 2024 the Landlord's representative filed a *Landlord Application to Determine Dispute (Form 2(B))* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed to claim against the security deposit, and for compensation above the security deposit for rent owed.
- [2] On February 20, 2024 the Landlord electronically served the Application.
- [3] On March 22, 2024 the Rental Office electronically provided the parties with the *Notice of Hearing*.
- [4] On April 17, 2024 the *Evidence Package* was electronically sent to the parties. The *Evidence Package* contains 16-pages of documents.
- [5] All documents (including the Application, the *Notice of Hearing*, and the *Evidence Package*) were properly served to the parties in accordance with clause 100(1) of the *Residential Tenancy Act* (the "Act").
- [6] On April 23, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Representative participated on behalf of the Landlord. The Tenants did not participate. The Officer delayed the hearing for ten minutes, and attempted to contact the Tenants. The Tenants could not be reached as both phone numbers on file were disconnected. At 11:11 a.m., the Officer sent an e-mail to the Tenants reminding them of the scheduled hearing and provided them with the contact information to participate in the hearing. The hearing proceeded in the Tenants' absence.

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 for rent owing?

Summary of the Evidence

- [7] The Rental Unit is situated in a 24-unit motel (the "Residential Property"). The Landlord purchased the Residential Property on January 27, 2023. The Tenants were already residing in the Rental Unit and the oral, month-to-month tenancy agreement continued. Rent was \$1,236.00 due on the first day of the month. A security deposit of \$400.00 was transferred to the Landlord on January 1, 2023.

Landlord's Evidence and Submissions

- [8] The Representative submitted 16-pages of documents into evidence including, the Application, proof of service of the Application, e-mails to the Tenants, an e-mail to the Tenants' social support worker, a Tenant Statement for the Tenants (the "Rent Ledger"), and an *Eviction Notice (Form 4(A))*.
- [9] The Representative stated that the Tenants vacated the Rental Unit on February 6, 2024. The Tenants vacated the Rental Unit owing \$2,117.00 in arrears for rent. The Representative stated that the arrears for rent are broken down as follows:
 - December 2023 rent: \$600.00;
 - December 2023 NSF: \$25.00;
 - January 2024 rent: \$1,236.00; and
 - February 1-6 2024 rent: \$256.00

- [10] The Representative stated that she has been trying to work with the Tenants to get caught up on their arrears. The Representative stated that she served an *Eviction Notice* to the Tenants in December 2023 for non-payment of rent. The Representative stated that the parties agreed on a payment plan (page 14 of *Evidence Package*). However, the Tenants did not make any payments as agreed. The Representative stated that the last payment received from the Tenants was \$300.00 on December 14, 2023.
- [11] The Representative stated that on February 14, 2024 the Tenants signed into the Landlord's internal online portal. The Representative stated that there has been no communication with the Tenants since they vacated the Rental Unit.

Tenants' Evidence and Submissions

- [12] The Tenants did not participate at the hearing to provide oral submissions and/or evidence. The Tenants did not submit any documents into evidence, or any written submissions in response to the Application. There is no record of the Tenants responding to the Rental Office nor any attempts by the Tenants to contact the Rental Office prior to the hearing date.

Analysis

- [13] The Application is made in accordance with clause 75 of the Act, and seeks to make a claim against the security deposit, pursuant to clause 40(1) of the Act. Further, the Application seeks an order for additional compensation above the total amount of the security deposit. Clause 40(1) of the Act states:

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.*

- [14] Further, clauses 19(1) and 85(1)(d) 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.*

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] The Landlord initiated the Application under the Act. The Landlord bears the onus of proving its claim on a balance of probabilities. This means 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 damage(s).

Security Deposit & Additional Compensation: Arrears for rent in the amount of \$2,117.00

- [16] The Officer finds that the undisputed testimony, and documentary evidence submitted by the Landlord establishes that the Tenants owe rental arrears in the amount of \$2,117.00. The *Eviction Notice*, the e-mail exchange between the parties regarding a payment plan, and the Rent Ledger provide convincing evidence to conclude that the Tenants owed arrears that were not paid, despite the parties agreeing to a payment plan.
- [17] The Officer finds that the Tenants owe \$2,117.00 in rental arrears. The Landlord has established a valid claim to retain the security deposit and interest for rent owing. Therefore, the Application is allowed.

Conclusion

- [18] The Application is allowed. The Landlord is entitled to retain the security deposit and interest.
- [19] The accrued interest on the \$400.00 security deposit is \$12.95, being a total of \$412.95.
- [20] The Officer's calculations are as followed:

Item	Amount
Arrears owed for rent	\$2,117.00
Less security deposit & interest	(\$412.95)
Amount owed to the Landlord	\$1,704.05

- [21] **This Order will be served to the parties by e-mail.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$412.95 from the security deposit and interest.
- B. The Tenants shall pay the Landlord \$1,704.05 by May 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 29th 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 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.