

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 3, 2024 the Landlords filed a *Landlord Application to Determine Dispute (Form 2(B))* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed with the Rental Office for the following reason:
 - 1) To make claim against the full amount of the security deposit.
- [3] On May 3, 2024 the Landlords emailed the Application to the Tenants.
- [4] On May 14, 2024 the Rental Office emailed the parties a notice of a teleconference hearing.
- [5] On May 29, 2024 the Rental Office emailed the parties the evidence package (the “EP”) by email. The EP contains 35-pages of documentary evidence submitted by the parties.
- [6] On June 4, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). One of the Landlords (the “Landlord”) and the Tenants participated at the hearing.

Issues

- i. Is there a tenancy agreement between the parties?
- ii. Are the Landlords entitled to retain the security deposit?

Summary of the Evidence

- [7] The Rental Unit is a room with shared facilities situated in a 3-bedroom and 1-bathroom single-family dwelling (the “Residential Property”).
- [8] On April 7, 2024 the Tenants contacted the Landlord regarding a Facebook Marketplace ad for the Rental Unit. The parties agreed to \$800.00 rent with internet, lawn care and furniture included. On April 10, 2024 the Tenants paid a \$800.00 security deposit.
- [9] The anticipated move-in date was May 1, 2024 for a year fixed-term. However, on April 28, 2024 the Tenants informed the Landlord they would not be moving into the Residential Property.

Landlords’ Evidence and Submissions

- [10] The Landlords submitted 5-pages of documents into evidence including: proof of service, a brief written submission, an internet set-up invoice, and text messages.
- [11] On April 13, 2024 the Tenants were expected to meet the Landlord and other tenants at the Residential Property. This meeting was to provide the Landlord with the government issued IDs and sign the tenancy agreement. The Tenants did not participate at the meeting.
- [12] On April 13 and 18, 2024, the Landlord sent text messages to the Tenants confirming their continued intention to move into the Residential Property for May 1, 2024. The Landlord stated that the Tenants confirmed and she purchased furniture for the Rental Unit.
- [13] The Landlord stated that the Tenants have misunderstood the text messages between the parties. The Landlord denied changing the terms of the tenancy agreement.

- [14] The Landlord stated that she always kept the Tenants up to date about what the other tenants' intentions were about moving into the Residential Property. The Landlord did not believe a term of the tenancy agreement was that specific occupants were move into the Residential Property.
- [15] On April 28, 2024 the Landlord texted the Tenants to ask if they were fine with her opening accounts for water, heat, electricity and internet. The Landlord stated that she was only trying to help the Tenants and wanted the Residential Property ready for May 1, 2024.
- [16] The Landlord stated that internet is included in the tenancy agreement. The Landlord stated that the Tenants were only responsible for 50% of the utilities: water, heat and electricity. There was no additional deposit required, as the Tenants suggested.
- [17] The Landlord submitted that the Tenants did not provide proper notice and she is seeking to retain the full amount of the security deposit to cover May 2024 rent.
- [18] The Landlord stated that if the Tenants believed there was an unauthorized rent increase then they could have contacted the Rental Office and filed an application.

Tenants' Evidence and Submissions

- [19] The Tenants submitted 23 pages of documents into evidence including: a written submission, text messages, screenshots of Facebook Market place ads, e-transfer receipt, and translations for all the communications.
- [20] The Tenants stated that they missed the April 13, 2024 meeting due to illness.
- [21] The Tenants stated that they paid the Landlord the security deposit because she urgently requested it. The Tenants stated that despite paying the security deposit, they did not believe the tenancy agreement was finalized.
- [22] The Tenants stated that they already provided the Landlord their full names and IDs.
- [23] On April 14, 2024 the Landlord sent a text message to inform them the other tenants may not move into the Residential Property. The Tenants stated that they were concerned about not knowing who may occupy the Residential Property with them (19 of the EP).
- [24] On April 28, 2024 the Landlord sent a text message to request that she set up accounts for water, electricity, heating and internet, and the Tenants would have to pay 50%. The Tenants stated that this was an additional deposit and a change in the agreed upon terms of the tenancy (20 of the EP).
- [25] The Tenants stated that they decided not to move into the Rental Unit because they paid the security deposit and the Landlord changed the terms of the tenancy agreement.

Analysis

Issue i: Is there a tenancy agreement between the parties?

- [26] On April 7, 2024 the Tenants responded to a Facebook Market place advertisement and contacted the Landlord. Between April 7-10, 2024 the parties continued to negotiate terms of the tenancy, and on April 10, 2024 the Tenants e-transferred \$800.00 for a security deposit.
- [27] The parties were to meet on April 13, 2024 to meet and sign the tenancy agreement, which did not happen due to one of the Tenant's illness.

- [28] Clause 11(2) of the Act outlines the requirements for a tenancy agreement. Further, clause 13 of the Act requires that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant occupies the rental unit.
- [29] The Officer finds based on the evidence presented that the parties agreed on the fundamental terms of a tenancy agreement. Further, the Tenants paid the Landlord a security deposit, and the parties agreed to meet where it was likely expected the tenancy agreement would have been signed. Some of the agreed upon points include:
1. The names of the parties;
 2. The address of the Rental Unit;
 3. The date the tenancy agreement was going to be signed;
 4. The rent amount;
 5. The services included;
 6. The security deposit amount; and
 7. The expected move in date.

- [30] Therefore, the Officer concludes that there was a tenancy agreement between the parties.

Issue ii: Are the Landlords entitled to retain the security deposit?

- [31] 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. 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.

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.

- [32] The Officer finds that the Tenants informed the Landlord on April 28, 2024 that they would not be moving into the Residential Property. The Tenants submitted that the Landlord changed the terms of the agreement and that they did not sign the tenancy agreement. The Landlord denied the Tenants' assertion and is seeking to retain the security deposit to cover May 2024 rent, as she was unable to re-rent it with short notice.
- [33] The Officer finds that despite not signing the tenancy agreement or moving into the Residential Property, the Tenants had the obligation to provide proper notice under the Act. The evidence presented establishes that the Tenants did not give proper notice to the Landlord.

- [34] The Officer finds that the evidence presented does not establish that the Landlords changed the agreed upon terms in the tenancy agreement. The Landlord has established a valid claim to retain the security deposit for May 2024 rent. The Application is allowed.

Conclusion

- [35] The Application is allowed. The Landlords are entitled to retain the security deposit.
- [36] The accrued interest on the \$800.00 security deposit is \$3.20, which must be returned to the Tenants.
- [37] The Officer's calculations are as followed:

Item	Amount
Arrears owed for rent	\$800.00
Less security deposit	(\$800.00)
Interest on security deposit	\$3.20
Amount returned to the Tenants	\$3.20

IT IS THEREFORE ORDERED THAT

1. The Landlords shall retain \$800.00 from the security deposit.
2. The Landlords shall return \$3.20 to the Tenants by June 25, 2024.

DATED at Charlottetown, Prince Edward Island, this 14th day of June, 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.