

Introduction

- [1] On April 16, 2024, the Tenants filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Tenant Application”) with the Residential Tenancy Office (the “Rental Office”), requesting a return of the security deposit, pursuant to the *Residential Tenancy Act* (the “Act”).
- [2] On May 14, 2024, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “Landlord Application”) with the Rental Office, seeking to make a claim against the security deposit, pursuant to the *Act*.
- [3] On May 23, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). One Tenant, representing both Tenants, and the Landlord participated in the hearing.

Issue to be Decided

- i. Are the Tenants entitled to a return of the security deposit?

Summary of the Evidence

- [4] On August 1, 2022, the parties entered into a written fixed-term tenancy agreement for the Rental Unit, which was a room rental in a house (the “Residential Property”). The parties continued to enter into continuous six-month fixed term agreements until the Tenants vacated on March 31, 2024. Rent was \$750.00 due on the first day of the month. A security deposit of \$700.00 was required and paid on August 1, 2022. The Tenant stated he noted the security deposit was \$750.00 on the Application but it should have stated \$700.00.

Tenants’ Evidence and Submissions

- [5] The Tenant stated the parties signed a fixed-term tenancy agreement for November 1, 2023, to April 30, 2024. He stated the Tenants notified the Landlord by email on January 28, 2024, that the Tenants would be vacating on March 31, 2024. He stated the Landlord had previously told him that as long as the Tenants provided at least two months’ notice, then that was sufficient for notice for vacating.
- [6] The Tenant stated he told the Landlord he would try to help find a replacement tenant, but he could not find anyone. He stated he should not be responsible for finding a replacement tenant or for paying rent for April as he gave the proper notice the Landlord required. The Tenant stated there was a cockroach problem at the Rental Unit and the Landlord did not hire a pest control company.

Landlord’s Evidence and Submissions

- [7] The Landlord stated the Tenants re-signed a fixed-term tenancy agreement every six months and the final fixed-term agreement was from November 1, 2023, to April 30, 2024. The Landlord stated the Tenants emailed her on January 28, 2024, stating they would be vacating on March 31, 2024.
- [8] The Landlord stated she emailed the Tenants on January 29, 2024, and notified them that if they were leaving a month earlier than the end of the fixed-term then they were responsible for finding a replacement tenant for April. She denied that she told the Tenants they only had to provide her two months’ notice to end the agreement and always told the Tenants to look at the tenancy agreement for the requirements. Messages between the parties were submitted into evidence.

- [9] The Landlord stated she attempted to secure another tenant for April but was unable to do so. She stated she placed online ads and had showings but she was unable re-rent the room until May 1, 2024. The Landlord submitted into evidence screen shots of inquiries individuals had made regarding the room rental. She stated the Tenants were not able find another tenant to take over the rest of the fixed-term and she is seeking to retain the security deposit for rent owing for April 2024. The Landlord stated she was not made aware of the cockroach problem until after the Tenants vacated.

Analysis

Are the Tenants entitled to a return of the security deposit?

- [10] The Tenant Application is seeking a return of the security deposit and the Landlord Application is seeking to make a claim against 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.*

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.

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.*

- [11] The parties agreed that they entered into a fixed-term tenancy agreement for the period of November 1, 2023, to April 30, 2024. The parties also agreed that the Tenants provided notice on January 28, 2024, and vacated the Rental Unit on March 31, 2024.

- [12] The Officer finds that the Tenants have not provided sufficient evidence to establish the Landlord agreed to end the tenancy early. The messages between the parties establish that the Landlord notified the Tenants that they were required to find another tenant for the remainder of the fixed-term. The Officer further finds that the evidence establishes that the Landlord attempted to mitigate her damages by advertising and showing the Rental Unit, but she was unable to secure another tenant until May 2024.

- [13] The Officer finds that the Tenants vacated the Rental Unit on March 31, 2024, prior to the end of the fixed-term, without providing proper notice. The Officer finds the Landlord is entitled to retain the security deposit and interest for rent owing for April 2024.

Conclusion

- [14] The Landlord Application is allowed and the Tenant Application is denied.
- [15] The Landlord shall retain the security deposit and interest in the amount of \$724.90.
- [16] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the security deposit and interest in the amount of \$724.90.

DATED at Charlottetown, Prince Edward Island, this 20th day of June, 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.