

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 9, 2024 the Tenant filed an amended *Form 2 (A) Tenant Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for a return of rent for May and pro-rated rent for April 2024. The Application also seeks an earlier termination of the tenancy agreement.
- [3] On May 9, 2024 the Application was emailed to the Landlord’s representative (the “Representative”).
- [4] On May 14, 2024 the Rental Office mailed and emailed the parties a notice for a teleconference hearing.
- [5] On June 4, 2024 the Rental Office provided the parties a 34-page evidence package (the “EP”) by email. The Representative submitted additional evidence after the hearing which included a written statement and a copy of redacted tenancy agreement. In response, the Tenant submitted a written submission and five attached photographs.
- [6] On June 13, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant and the Representative participated in the hearing.

Preliminary Matter

- [7] At the beginning of the hearing the Tenant requested to amend the Application. The Tenant wanted the tenancy agreement to be converted from a fixed-term to a month-to-month agreement; rather than end the tenancy earlier.
- [8] The Representative requested a 10-minute recess to speak with the Landlord about the proposed amendment. The Officer granted the recess. The Representative returned and stated the Landlord’s objection to the proposed amendment. The Representative stated that the Landlord had committed to other plans for the Rental Unit after June 30, 2024. The Representative stated that the Landlord was not disputing the Tenant’s request to terminate the tenancy as of June 30, 2024, as the Application requests.
- [9] After considering the parties’ submissions, the Officer denied the proposed amendment to the Application. The Officer finds that to allow the proposed amendment at the hearing would have been unfair to the Representative and Landlord, as they prepared their evidence and submissions accordingly to the remedies sought in the Application (early termination and return of rent).
- [10] The Tenant requested that the Officer consider July 31, 2024 be the end of the tenancy agreement. To permit the Tenant more time to find living accommodations. The Representative objected to this request based on the same reasons stated above. The Officer permitted oral submissions on this request and allowed the change in the termination date to be considered.

Issues

- i. Is the Tenant entitled to a return of rent?
- ii. Is the Tenant entitled to terminate the tenancy agreement early?

Summary of the Evidence

- [11] The parties entered into a written, fixed-term tenancy agreement for the period of March 20, 2024 to February 28, 2025. Rent is \$1,895.00 due on the first day of the month. A security deposit of \$1,895.00 was paid on February 27, 2024. The Tenant moved into the Rental Unit on March 28, 2024.

Tenant's Evidence and Submissions

- [12] The Tenant submitted 24-pages of documents into evidence including: written submissions, a copy of the tenancy agreement, photographs, email correspondents with representatives of the Landlord, and text messages.
- [13] The Tenant stated that when he moved into the Rental Unit, renovations were on-going in the upstairs, making two of the three bedrooms inaccessible. The Tenant stated that he was told "You will not be charged rent until the project is complete. As it will occur partially through a month you will be charged the pro-rated amount" (16 of the EP).
- [14] The Tenant stated that the work has not been complete, yet he was served an eviction notice for non-payment of rent. The Tenant stated that he paid the pro-rated April 2024, May 2024 and June 2024 rent. However, the Tenant is only seeking a return of rent for pro-rated April 2024 rent (\$441.83) and May 2024 rent (\$1,895.00).
- [15] The Tenant stated that on April 19, 2024 the Representative did a walk-through of the Rental Unit. The Tenant stated that he informed the Representative of some of the remaining issues. Specifically, the Tenant stated that the entry to the staircase is not functional. The Tenant stated that it does not meet safety code because it is too narrow to have any furniture moved upstairs.
- [16] The Tenant submitted that the door track in the bedroom door is not fixed, and the locks for the bedroom and the bathroom door are not working. The Tenant also submitted some concerns about improper notice.
- [17] The Tenant submitted a written response to the Representative's additional evidence.

Landlord's Evidence and Submissions

- [18] The Representative submitted additional evidence including: a written submission and a copy of a new tenancy agreement with another tenant.
- [19] The Representative stated that the Landlord is not disputing the Tenant's request to terminate the tenancy agreement on June 30, 2024. The Representative stated that the Landlord has a new tenant moving into the Rental Unit in July 2024 and objects to the July 31, 2024 vacate date proposed by the Tenant.
- [20] The Representative submitted a redacted copy of the new tenancy agreement dated June 10, 2024. It is a month-to-month agreement that begins July 25, 2024.
- [21] The Representative stated that she relied on the Tenant's intent to vacate the Rental Unit on June 30, 2024.
- [22] The Representative stated that the Tenant knew about the renovations when he moved into the Rental Unit. This is why the Tenant received pro-rated rent for April 2024.

- [23] The Representative stated on April 20, 2024, the project was complete and the Tenant was charged pro-rated rent. The Representative stated that the only remaining items is a backorder on a microwave and to repair an issue with one of the bedroom doors. The Representative stated that the Tenant lives in the Rental Unit, is asking for an extension of the tenancy, yet questions the safety and the state of the Rental Unit.
- [24] The Representative stated that no contractor or professional has said that the entry to the staircase is unsafe. The Representative stated that she does not believe there are any concerns regarding fire safety as the railings have been installed.
- [25] The Representative stated that the Tenant is not entitled to a return of rent as he was already provided pro-rated rent, and continued to live in the Rental Unit. The Representative stated that the project was complete and the remaining outstanding items do not justify a return of rent.

Analysis

i. Is the Tenant entitled to a return of rent?

- [26] The Application is made in accordance with clause 75 of the Act. The Application seeks a return of rent in the amount of \$2,336.83. The Tenant seeks the monetary compensation because the Landlord failed to complete the repairs in the Rental Unit. Clause 28(1) of the Act states:

28. Obligation to repair and maintain

(1) *A landlord shall provide and maintain the residential property in a state of repair that*

(a) *complies with the health, safety and housing standards required by law; and*

(b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

- [27] For the reasons below, the Officer finds that the Tenant's return of rent claim is denied.
- [28] The Tenant submitted that the renovations was not complete, and that he would not be charged rent until the work was complete. Specifically, the Tenant submitted that the entry to the staircase was not safe and was not in compliance with fire and safety code.
- [29] The Officer notes that the Tenant submitted photographs of the entry to the stair case (20-21 of the EP). However, the Tenant did not submit into evidence any reports, nor findings from a professional and/or government authority to corroborate the Tenant's submissions.
- [30] Despite the narrow entry to the staircase as the photographs show, the Officer cannot conclude that the entry to the staircase is not in compliance with any health, safety or housing standard required by law.
- [31] The Officer finds that as the Tenant continued to reside in the Rental Unit throughout the renovations, and that the Tenant was aware of the state of the Rental Unit as the time of move-in, the Officer finds that the Tenant has not established a valid claim for a return of rent.

ii. Is the Tenant entitled to terminate the tenancy agreement early?

- [32] The Application also request the earlier termination of the fixed-term tenancy agreement. The Application requests June 30, 2024 as the vacate date. However, the Tenant, at the hearing, requested an extension and new vacate date of July 31, 2024.

- [33] The Tenant stated that he is actively looking for a new place to live but because of the housing crisis, is having issues securing one before June 30, 2024. The Representative stated that she is not objecting to the June 30, 2024 vacate date. However, the Representative stated that the Landlord has found a new tenant due to the Application, and the new tenant is set to move into the Rental Unit on July 25, 2024. For this reason, the Representative objected to the July 31, 2024 vacate date.
- [34] The Officer finds that there is no dispute from the parties that the tenancy shall end earlier than the fixed-term date. The Tenant is not satisfied with the Rental Unit, and the Landlord has accommodated the request to end the tenancy earlier. The Officer accepts the parties undisputed position and grants the early termination of the tenancy agreement.
- [35] However, the parties do dispute the effective date which the tenancy shall end. The Tenant has requested additional time to find a new place to live (July 31, 2024). The Representative stated that a new tenant is set to move into the Rental Unit for July 25, 2024 and expected the Tenant to move out on June 30, 2024 as the Application requested.
- [36] In this case, the Officer finds that the Landlord relied on the Tenant's request to vacate on June 30, 2024 and mitigated its losses by finding a new tenant. The documentary evidence suggests the new tenant is set to move in July 25, 2024. Given the current housing market in Prince Edward Island, the Officer recognizes the Tenant's difficulties of finding a new living arrangement. Therefore, the Officer finds that the tenancy agreement between the parties shall terminate effective 5:00 p.m. on July 15, 2024.
- [37] The Tenant is provided with some additional time to find living accommodations, while the Landlord will still have time to have the Rental Unit prepared for the new tenant(s). The claim is allowed.

Conclusion

- [38] The Application is allowed, in part.
- [39] The tenancy agreement shall terminate effective 5:00 p.m. on July 15, 2024. The Tenant and all occupants shall vacate the Rental Unit by this time and date.
- [40] For greater clarity, the Tenant is responsible to pay rent up to the date of vacate, in the amount of \$916.94 (15 days divide 31 days multiply \$1,895.00).
- [41] This order will be served to the parties by email.

IT IS THEREFORE ORDERED THAT

- 1. The tenancy agreement shall terminate effective 5:00 p.m. on July 15, 2024. The Tenant and all occupants shall vacate the Rental Unit by this time and date.**
- 2. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.**

DATED at Charlottetown, Prince Edward Island, this 24th 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 (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.