

## Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 13, 2024, the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* (the “First Application”) with the Residential Tenancy Office (the “Rental Office”):
- To make claim against the full amount of the security deposit; and*  
*To seek compensation exceeding the security deposit in the amount of \$611.00.*
- [3] On June 12, 2024, the Landlord filed a second *Landlord Application to Determine Dispute (Form 2(B))* (the “Second Application”) with the Rental Office:
- To request an order directing my tenant to pay outstanding rent.*
- [4] On June 24, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord, a Landlord representative (the “Representative”), the Tenant, and a translator for the Tenant participated in the hearing.

## Issues to be Decided

- i. Is the Landlord entitled to outstanding rent?
- 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

- [5] In September of 2023 the parties entered into a written, fixed-term tenancy agreement for the Rental Unit beginning October 1, 2023. Rent was \$2,500.00 due on the first day of the month. On September 29, 2023, the full amount of the security deposit of \$2,500.00 was paid. The Tenant vacated on April 30, 2024.

## Landlord’s Evidence and Submissions

- [6] The Representative’s evidence is as follows. The Tenant was in a fixed-term tenancy from October 1, 2023, to August 31, 2024. The Tenant provided notice in March 2024 that she would be vacating in April 2024. The Tenant notified the Representative that the Landlord could retain the security deposit for rent for April. The Tenant did not provide proper notice to end the fixed-term and the Landlord is seeking rent owing for May 2024. Copies of Kijiji ads were submitted into evidence showing that the Landlord starting looking for a new tenant in March 2024 but a new tenant could not be secured until July 2024.
- [7] The Tenant did not properly clean the Rental Unit when she vacated. The Tenant left garbage in and food in the unit which attracted ants. Photos of the unit after the Tenant vacated were submitted into evidence. There was construction when the Tenant moved in but she was allowed to move in early without paying rent and everything was clean at the start of the tenancy agreement. The Representative stated they would submit the \$400.00 cleaning invoice after the hearing.
- [8] The Tenant did not pay any of the required water bills during her tenancy, as water was not an included service. As the duplex only received one water bill, the Tenant was told she was responsible for 60% of the water bill and the tenants in the other half of the duplex were responsible for 40%. This was calculated due to the Tenant having three bedrooms and the other tenants had two bedrooms. The total owing by the Tenant is \$211.00 and the Representative stated they would submit the water bills after the hearing.

- [9] The Representative agreed that the washer and dryer for both units were connected to the Tenant's electricity. The Representative stated the Landlord agreed to discount the amount owing for the water bill by \$60.00, as the other tenants and the Landlord used the washer and dryer during her tenancy.

### **Tenant's Evidence and Submissions**

- [10] The Tenant's evidence is as follows. The Tenant agreed to allow the security deposit to be used for rent owing for April but disagreed that she should have to pay any additional rent. She found another place to live because she was being harassed by the Landlord. The Rental Unit was dirty and under construction when she moved in but she agreed she moved in a few days before the tenancy agreement began.
- [11] The Tenant did not agree to a 60/40 split of the water bill at the beginning of the tenancy and there is nothing in the tenancy agreement stating this. She only had herself and her son living in the Rental Unit and the other tenants in the other half of the duplex had four occupants. The Tenant stated she should only have to pay 33% of the water bills based on the number of occupants in each unit. The Tenant estimated she should be discounted \$100.00 for the extra electricity used by the other tenants and the Landlord for the washer and dryer. The Tenant submitted some of her electricity bills into evidence.

### **Landlord's Post Hearing Evidence and Submissions**

- [12] After the hearing the Landlord submitted copies of the water bills, the cleaning invoice, and a spreadsheet of water consumption. A copy of the evidence was provided to the Tenant.

### **Tenant's Post Hearing Evidence and Submissions**

- [13] The Tenant responded to the Landlord's post hearing evidence. She submitted she did not object to paying the water bills if they were calculated per person and she was credited with the extra electricity consumption. She submitted she did not have time to remove all the garbage when she vacated but would have returned to clean if the Landlord had contacted her. The Tenant's submission was provided to the Landlord. No further submissions were received from the parties.

### **Analysis**

- [14] The relevant law is as follows:

**39. Obligations on vacating**

- (2) *When a tenant vacates a rental unit, the tenant shall*
- (a) *leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.*

**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.

**Rent owing for April 2024**

- [15] The parties agreed rent for April 2024 had not been paid and the Tenant agreed to allow the Landlord to retain the security deposit for rent owing. The Officer finds that the Landlord may retain the \$2,500.00 security deposit for rent owing for April 2024. This claim is allowed.

**Rent owing for May 2024**

- [16] The Landlord is seeking rent owing for May 2024 in the amount of \$2,500.00 because the Tenant did not provide proper notice to end the fixed-term agreement. The parties agreed that they entered into a fixed-term agreement for the period of October 1, 2023, to August 31, 2024. The parties also agreed that the Tenant provided notice in March 2024 and vacated the Rental Unit on April 30, 2024.
- [17] The Officer finds that the Tenant vacated the Rental Unit prior to the end of the fixed-term without providing proper notice, as the termination date cannot be earlier than the date of the end of the fixed-term, which in this case was August 31, 2024. The evidence establishes that the Landlord attempted to mitigate their damages by advertising the Rental Unit in March after being provided notice, but they were unable to secure another tenant until July 2024. The Officer finds that the Landlord has established that they are entitled to rent owing for May 2024. This claim is allowed.

**Cleaning**

- [18] The Landlord is seeking \$400.00 for cleaning the Rental Unit after the Tenant vacated. The Officer finds that the Landlord has provided sufficient evidence, specifically the testimony of the Representative, the photographs of the Rental Unit, and the cleaning invoice, to establish that the condition of the Rental Unit was below the standard of reasonably clean when the Tenant vacated. This claim is allowed.

**Water bills**

- [19] The Landlord is seeking \$211.00 in outstanding water bills. The parties provided conflicting testimony as to what was agreed to at the start of the tenancy regarding what percentage of the water bills the Tenant was responsible for. The parties did agree there was an agreement, however there is nothing in the tenancy agreement as to what percentage or amount was agreed to.
- [20] The parties agreed the Rental Unit had two occupants and the other half of the duplex had four occupants. The Officer finds it reasonable that the division of the water bills should be calculated per occupant and that the Tenant is responsible for 33% (2/6) of the water bills, totaling \$115.89. As the Landlord agreed to reduce the water bill by \$60.00 for the extra electricity used by the washer and dryer, the Officer finds the amount owing to be \$55.89. This claim is allowed in part.

[21] The Officer's calculations are as follows:

<b>Item</b>	<b>Amount</b>
Rent Owing for April and May 2024	\$5,000.00
Cleaning	\$400.00
Water Bills	\$55.89
Less Security Deposit	(\$2,500.00)
Less Interest (Sept. 29/23 – July 11/24)	(\$45.76)
<b>Total Owed by Tenant</b>	<b>\$2,910.13</b>

## Conclusion

[22] The Application is allowed in part.

[23] The Landlord shall retain the security deposit and interest in the amount of \$2,545.76.

[24] The Tenant shall pay the Landlord \$2,910.13 by July 31, 2024.

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

## IT IS THEREFORE ORDERED THAT

1. The Landlord shall retain the security deposit and interest in the amount of \$2,545.76.
2. The Tenant shall pay the Landlord \$2,910.13 by July 31, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 11th day of July, 2024.

(sgd.) Mitchell King

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Mitchell King  
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.