

PRELIMINARY MATTER

- [1] The applicants are the Tenants (“A.D.”) and (“G.K.”).
- [2] The Tenants named two respondents in their applications:
1. The Former Landlord; and
 2. The Landlord

INTRODUCTION

- [3] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [4] On June 7, 2024 the Tenants filed two identical *Form 2 (A) Tenant Application to Determine Dispute* referred to as (the “Applications”) with the Residential Tenancy Office (the “Rental Office”). The Applications are seeking a monetary order to recover an unlawful rent increase pursuant to subsection 50(8) of the Act.
- [5] The Applications also sought to dispute a *Form 4 (B) Eviction Notice*. However, this part of the Applications is withdrawn. The Applications were emailed to the Landlord and the Former Landlord.
- [6] On June 27, 2024 the Rental Office emailed and mailed the parties a notice of a teleconference hearing, along with a copy of the Applications.
- [7] On July 5, 2024 the Rental Office emailed the parties the evidence package (“EP”).
- [8] On July 11, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenants, the Landlord and a representative for the Former Landlord (the “Representative”) participated at the hearing.
- [9] During the hearing, the Tenants requested an amendment to the Applications to include a request for compensation and moving expenses pursuant to section 72 of the Act. The Landlord and the Representative did not oppose to the amendment.
- [10] The Officer made a ruling to accept the amendment of the Applications and the parties provided submissions regarding the additional issue.

ISSUES

- i. Are the Tenants entitled to recover rent due to an unlawful increase?
- ii. Are the Tenants entitled to compensation pursuant to Section 72 of the Act?

SUMMARY OF EVIDENCE

- [11] On May 1, 2023 A.D. and the Former Landlord entered into a written, fixed-term tenancy agreement for a single-room in the Rental Unit. The fixed-term went until October 31, 2023. Rent was \$750.00 due on the first day of the month.
- [12] On May 1, 2023 G.K. and the Former Landlord entered into a written, fixed-term tenancy agreement for a double-room (the “Master Bedroom”) in the Rental Unit. The fixed-term went until October 31, 2023. Rent was \$1,000.00 due on the first day of the month. G.K. split the rent with another occupant not party to these Applications.
- [13] On November 1, 2023 A.D. and the Former Landlord renewed the tenancy agreement until April 30, 2024. Rent increased to \$800.00 due on the first day of the month.

- [14] On November 1, 2023 G.K. and the Former Landlord renewed the tenancy agreement until October 31, 2024. Rent increased to \$1,200.00 due on the first day of the month. G.K. split the rent with another occupant not party to these Applications.
- [15] On April 1, 2024 the Tenants entered into a single fixed-term tenancy agreement with the Former Landlord for the Master Bedroom in the Rental Unit. The fixed-term went until March 30, 2025. Rent was \$1,200.00 due on the first day of the month. The Tenants split the rent in half. A security deposit of \$1,200.00 was paid.
- [16] On June 13, 2024 the Landlord purchased the Rental Unit from the Former Landlord, which is a seven-bedroom and three-bathroom single family dwelling.
- [17] The Representative served each of the Tenants with a *Form 4 (B) Eviction Notice* for purchaser's own use. The Tenants vacated the Rental Unit on July 1, 2024. The tenancy ended and the security deposit was returned to the Tenants.

TENANTS' EVIDENCE AND SUBMISSIONS

- [18] The Tenants submitted 15-pages of documents into evidence including: a copy of the Tenants' tenancy agreements, and an email from the Former Landlord to the Tenants.
- [19] The Tenants' evidence is summarized as follows. The Tenants stated that they have lived in the Rental Unit and the Master Bedroom since May 2023. In November 2023 the Tenants renewed their tenancy agreements with the Former Landlord. The Representative increased their rents without any formal notice (EP – 28). The Tenants stated that they felt like they did not have a choice and accepted the increases.
- [20] In April 2024 the Tenants entered into a new agreement with the Former Landlord, and they shared the Master Bedroom. The Tenants shared the \$1,200.00 monthly rent, which G.K. was paying since November 1, 2023.
- [21] The Tenants stated that they did not become aware of their rights regarding lawful rent increases until May 2024. This was because the Representative served them an eviction notice, which they initially wanted to dispute. Through the information provided by the Rental Office and the application process, the Tenants learned of the rules around rent control.
- [22] The Tenants stated that they do not blame the Landlord. The Tenants stated that the Landlord never charged them rent and returned their security deposit. The Tenants stated that they respect the Landlord's intentions for the Rental Unit and they vacated on July 1, 2024.
- [23] The Tenants stated that the Former Landlord did not pay them compensation for being evicted and did not pay their moving costs. The Tenants stated that their moving costs were minimal, and the expense was \$200.00 total.

FORMER LANDLORD'S EVIDENCE AND SUBMISSIONS

- [24] The Former Landlord submitted 59-pages of documents including: written submissions, a copy of the tenancy agreements, text messages, emails, a copy of the *Form 4 (B) Eviction Notices*, a signed affidavit, and a copy of the agreement of purchase and sale.
- [25] The Representative did not dispute the facts detailed in the Tenants' submissions (EP – 30).
- [26] The Representative stated that A.D. rented a single room in the Rental Unit for \$750.00 a month. However, due to the increased costs to the Rental Unit's mortgage, property tax and utilities, the Former Landlord decided to increase the rent to \$800.00 a month starting in November 2023. The Representative stated that A.D. accepted and renewed the tenancy agreement with the increase.

- [27] The Representative stated that G.K. rented the Master Bedroom with another tenant for \$1,000.00 a month. However, the original rent for the Master Bedroom was \$1,100.00. G.K. negotiated the rent reduction to \$1,000.00 because G.K. was only living in the Master Bedroom 8-10 days a month.
- [28] In November 2023, G.K. was living in the Master Bedroom permanently. The Former Landlord decided to increase the rent to \$1,200.00. The increase was for the same reasons for A.D.'s increase. The Representative stated that G.K. and the other tenant accepted and renewed the tenancy agreement.
- [29] In April 2024, the other tenant moved out of the Master Bedroom and A.D. moved into the Master Bedroom. The Former Landlord signed a new tenancy agreement with both A.D. and G.K. and the rent remained at \$1,200.00 for the Master Bedroom.
- [30] The Representative stated that the Former Landlord did not pay the Tenants compensation or moving expenses for the eviction notice because he was waiting for the outcome of this matter.

LANDLORD'S EVIDENCE AND SUBMISSIONS

- [31] The Landlord stated that he purchased the Rental Unit on June 13, 2024, which was a move-up of the closing date. The Landlord stated that he was not aware of this dispute and the Applications. The Landlord stated that he would not have closed the deal if he was aware of this dispute.
- [32] The Landlord stated that he never charged the Tenants any rent. The Landlord stated that he returned the security deposit to the Tenants and does not believe he is liable. The Landlord stated that he is completing some renovations in the Rental Unit before moving into it.

ANALYSIS

- [33] The Applications were filed in accordance with subsection 75(1) of the Act requesting the recovery of an unlawful increase pursuant to subsection 50(8) of the Act. In addition, the Applications seek compensation pursuant to section 72 of the Act. The relevant law states:

PART 3 – WHAT RENT INCREASES ARE ALLOWED

47. Rent increases

- (1) *A landlord shall not increase rent except in accordance with this Part.*

Obligations tied to rental unit

- (2) *The obligations of a landlord under this Part run with the rental unit and not the tenant.*

50. Tenant may recover unlawful increase

- (8) *Where a landlord collects a rent increase that does not comply with this Part, the tenant may make an application to the Director under section 75 to recover the amount of the increase.*

72. Compensation for personal use

A landlord shall compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to one month's rent plus reasonable moving expenses in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant.

[34] Subsection 6(1) of the *Residential Tenancy Regulations* state:

6. Reasonable moving expenses

(1) *For the purposes of subsections 70(1) and (2) and sections 71 and 72 of the Act, reasonable moving expenses are the lesser of the actual expenses of the move or one month's rent.*

Issue i. Are the Tenants entitled to recover rent due to an unlawful increase?

[35] For the reasons set out below, the Officer finds that the Tenants are entitled to recover rent due to an unlawful increase.

[36] In A.D.'s case, the evidence establishes that at the beginning of his tenancy (May 1, 2023), the rent for the single-room in the Rental Unit was \$750.00. In November 2023, the Former Landlord increased the rent to \$800.00, an increase of 6.67%. The evidence establishes that the Former Landlord did this because of the increase in operating expenses for the Rental Unit. The Former Landlord did not give A.D. a *Form 8 Tenant Notice of Annual Allowable Rent Increase*. Further, the Former Landlord did not apply to the Rental Office for an additional rent increase.

[37] In G.K.'s case, the evidence establishes that at the beginning of his tenancy (May 1, 2023), the rent for the Master Bedroom in the Rental Unit was \$1,000.00. In November 2023, the Former Landlord increased the rent to \$1,200.00 an increase of 20%. The evidence establishes that the Former Landlord did this because of the increase in operating expenses for the Rental Unit. The Former Landlord did not give G.K. a *Form 8 Tenant Notice of Annual Allowable Rent Increase*. Further, the Former Landlord did not apply to the Rental Office for an additional rent increase.

[38] In April 2024, the Tenants entered into a new tenancy agreement for the Master Bedroom, where the rent remained at \$1,200.00.

[39] Prince Edward Island is a rent controlled jurisdiction and this has not changed in over thirty years. In Order LR19-15, the Island Regulatory and Appeals Commission (the "Commission") summarized this province's rent controls:

*"In Prince Edward Island, the Rental of Residential Property Act (the "Act") provides for a system of rent control whereby rent runs with the residential unit. When a lessee surrenders possession of that unit to the lessor, that rate of rent still remains fixed to that unit. This rent applies to a subsequent lessee even if the unit has been vacant between the tenancies. **Any agreement as to the amount of rent reached between lessor and lessee is null and void to the extent that it runs contrary to the rent control provisions of the Act.***

To balance out the rigours of rent control, Part IV of the Act sets out the process whereby rent increases may lawfully be made. If a lessor raises the rent of a unit without first following the process set out in Part IV of the Act, such an increase is illegal.

As there is no evidence that this rental increase was approved under Part IV of the Act, the Commission finds that the Appellant illegally increased the rent of 39 Rankin Court from \$800.00 per month to \$1500.00.

*Both the Appellant and Mr. Wang pleaded lack of knowledge as to the quantum of the previous rent and lack of familiarity as to the requirements of the Act. Mr. Wang's testimony appeared to deflect blame to others. **Lack of familiarity of the Act does not in any way mitigate the requirements of the Act.**" [emphasis added]*

- [40] In this case, the Officer finds that the evidence establishes that the established legal rent for the single-room is \$750.00. The established legal rent for the Master Bedroom is \$1,000.00. These rents were charged by the Former Landlord and paid by the Tenants. The evidence establishes that the Former Landlord raised the rent for the single-room and the Master Bedroom. The Former Landlord did not comply with the rent control provisions in Part 3 of the Act. Therefore, the Tenants are entitled to a return of rent for the unlawful rent increase that they have paid throughout their tenancies. This claim is allowed. The calculations are listed further in the decision.
- [41] The established legal rent for the single-room in the Rental Unit is \$750.00 and \$1,000.00 for the Master Bedroom.¹

Issue ii. Are the Tenants entitled to compensation pursuant to Section 72 of the Act?

- [42] The Officer finds that the evidence establishes that the Former Landlord served the Tenants a *Form 4 (B) Eviction Notices* for purchaser's own use, attached with a signed affidavit. On July 1, 2024 the Tenants vacated the Rental Unit pursuant to the eviction notices. At the hearing, the Tenants withdrew their claim disputing the eviction notices.
- [43] The Officer finds that the Tenants are entitled to compensation pursuant to section 72 of the Act. Therefore, this claim is allowed. The Tenants are entitled to one months' rent which is \$1,000.00 and reasonable moving expenses, in the amount of \$200.00. The calculations are listed further below.

Liability

- [44] The parties provided submissions regarding whether the Former Landlord or the Landlord is liable for paying the Tenants' compensation in the Applications. To determine this, the Officer notes that subsection 1(h) of the Act defines "landlord" as follows:

1. Definitions

In this Act,

(h) "**landlord**", in relation to a rental unit, includes

- (i) *the owner of the rental unit, the owner's agent or another person who, on behalf of the owner,*
 - (A) *permits occupation of the rental unit under a tenancy agreement, or*
 - (B) *exercises power and performs duties under this Act or a tenancy agreement,*
- (ii) *the heirs, assigns, personal representatives and successors in title to the owner,*
- (iii) *a person, other than a tenant occupying the rental unit, who*
 - (A) *is entitled to possession of the rental unit, and*
 - (B) *exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit, and*
- (iv) **a former landlord, as the context requires.** [emphasis added]

- [45] The Officer finds that in this case, the breach of Part 3 of the Act started in November 2023 when the Former Landlord unlawfully increased the rents. Further, the Former Landlord served the eviction notices to the Tenants.
- [46] The Landlord purchased the Rental Unit on June 13, 2024. The Officer accepts the evidence from the Landlord that he did not know about the dispute until after he became the owner. The Landlord never charged or accepted any rent from the Tenants. The Landlord returned the security deposit to the Tenants.

¹ Clause 85(1)(e) and (p) of the Act.

[47] Clause 1(h)(iv) of the Act includes former landlord in the definition of landlord. The Officer finds that the Former Landlord is liable to pay the Tenants' compensation for the unlawful rent increase and the compensation required under Section 72 of the Act.

CONCLUSION

[48] The Applications are allowed.

[49] The calculations are as follows:

Item	Amount
Return of rent for A.D. (\$50 x 5 months) + (\$100 x 3 months)	\$550.00
Compensation for A.D. (\$1,000 / 2) + (\$200 / 2)	\$600.00
Total compensation for A.D.	\$1,150.00
Return of rent for G.K. (\$100 x 8 months)	\$800.00
Compensation for G.K. (\$1,000 / 2) + (\$200 / 2)	\$600.00
Total compensation for G.K.	\$1,400.00

[50] Rent for the Rental Unit is set as follows:

- Single-room: \$750.00;
- Master Bedroom: \$1,000.00

This amount is fixed and can only be increased by following the process set out in the Act.

IT IS THEREFORE ORDERED THAT

- I. **The Former Landlord shall pay A.D. \$1,150.00 by September 30, 2024.**
- II. **The Former Landlord shall pay G.K. \$1,400.00 by September 30, 2024.**
- III. **Rent for the Rental Unit is set as follows:**
 - **Single-room: \$750.00 per month; and**
 - **Master Bedroom: \$1,000.00 per month.**

This amount is fixed and can only be increased by following the process set out in the Act.

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