

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 3, 2024, the Tenants filed a *Tenant Application to Determine Dispute (Form 2(A))* with the Residential Tenancy Office (the “Rental Office”) seeking a return of the security deposit (the “Tenant Application”). A copy was served to the Landlord on the same date.
- [3] On June 7, 2024, the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* with the Rental Office seeking to make a claim against the security deposit for rent owing and compensation for “Other obligations” (the “Landlord Application”). A copy was served to the Tenants on the same date.
- [4] The Landlord submitted an additional two pages with the Application detailing the “Other obligations.” The additional submissions stated the Landlord was seeking compensation for:
- a. \$259.41 for an outstanding electricity bill for April 2024;
 - b. \$247.08 for an outstanding electricity bill for May 2024; and
 - c. \$37.75 for an outstanding fuel bill.
- [5] On July 18, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenants, a Tenant witness, and the Landlord participated in the hearing.

ISSUES

- i. Are the Tenants entitled to a return of the security deposit?
- ii. Is the Landlord entitled to compensation?
- iii. Do the Tenants owe the Landlord rent?

SUMMARY OF EVIDENCE

- [6] On May 2, 2023, the parties entered into a written fixed-term tenancy agreement for the Unit, for the period of June 1, 2023, to May 31, 2024. The Unit is the upstairs portion of an over/under duplex, and the Landlord lives in the lower portion (the “Residential Property”). Rent was \$2,100.00 due on the first day of the month. A security deposit of \$2,100.00 was paid on May 2, 2023. The Tenants vacated on May 1, 2024.

Landlord’s Evidence and Submissions

- [7] The Landlord’s evidence is as follows. The Tenants entered into a one-year fixed-term agreement which was to end May 31, 2024. The Tenants told the Landlord that they may be vacating before the end of the fixed-term. The Landlord told the Tenants that if they vacated before the end of the fixed-term, the Tenants would be required to find new tenants to take over the rest of the agreement. The Tenants did not find anyone to take over their agreement and they vacated on May 1, 2024. The Landlord is seeking to retain the security deposit for rent owing for May 2024.
- [8] The Landlord found new tenants for May 2024 but he could not remember when in May the new tenants moved in. The Landlord stated he would send a copy of the new tenancy agreement to the Rental Office after the hearing.
- [9] When the tenancy agreement began, the parties agreed the Tenants were responsible for the oil bills as well as 75% of the monthly electricity bill, with the Landlord paying the other 25%. In November 2023, the Landlord installed an electric water heater which was used by both parties. At that time the Landlord changed the agreement and told the Tenants that the Landlord would pay \$25.00 of the monthly electricity bill and the Tenants would pay the rest.

- [10] After deducting \$25.00 from the two outstanding electricity bills, the Tenants owe \$259.41 for April 2024 and \$247.08 for May 2024. The billing period for May ended on May 6 and the Landlord is not seeking the expenses from after that date. The last oil bill was paid up until April 22, 2024, and the Tenants used the oil between April 22 and May 1, 2024. The Landlord pro-rated the oil bill and the Tenants owe \$37.75 up to May 1, 2024.

Tenant's Evidence and Submissions

- [11] The Tenants' evidence is summarized as follows. The Tenants disputed that they owe rent for May 2024. The Tenants told the Landlord on February 28, 2024, that they would be vacating by May 1, 2024, because of the high utility costs. The tenancy agreement stated that the Tenants were required to give at least two-months' notice to end the fixed-term, and they provided more than two-months' notice.
- [12] The Tenants agreed the Landlord told them they could vacate before the end of the fixed-term if they found replacement tenants. The Tenants do not believe they were required to find new tenants because they gave proper notice. The Landlord had over 25 viewings of the Unit when trying to re-rent it and the Landlord should have been able to find someone to move in by May 1, 2024.
- [13] When the parties entered into the tenancy agreement, the Landlord told the Tenants they were responsible for 75% of the electricity bills, which they agreed to. The Landlord sent a text after the water heater was installed stating the split was "75/25" and "\$100.00 on average." The Tenants assumed that still meant 75% and 25%, not \$75.00 and \$25.00, as the Landlord did not use a dollar sign in the text. The Tenants agreed they owe for outstanding electricity, but only 75% of the expenses, as opposed to \$25.00 per month less of the expenses.
- [14] The Tenants agreed that they owe \$37.35 for the fuel expense.

POST HEARING EVIDENCE AND SUBMISSIONS

- [15] On July 22, 2024, the Landlord sent the Rental Office a copy of the tenancy agreement entered into after the Tenants vacated. The Tenancy agreement was entered into on May 15, 2024, for a fixed-term from May 18, 2024, to April 30, 2025. Rent and security deposit is \$2,150.00 and the Landlord is responsible for \$40.00 of the electricity bill.
- [16] On July 22, 2024, a copy of the tenancy agreement was sent to the Tenants and they were asked to reply with any submissions by July 24, 2024. No further submissions were received by this date.

ANALYSIS

Issue i: Are the Tenants entitled to a return of the security deposit?

- [17] The evidence establishes that the Tenants vacated on May 1, 2024, prior to the end of the fixed-term of May 31, 2024. The Landlord was able to secure a new tenant for May 18, 2024, and at that time tenancy agreement between the parties was terminated. The Landlord then had 15-days to file an application with the Rental Office to retain the security deposit, but he did not do so until June 7, 2024.
- [18] There are no earlier Rental Office decisions authorizing the Landlord to retain the security deposit. The parties did not come to an agreement that the Landlord could retain the security deposit. As a result, the Landlord must pay the Tenants double the security deposit plus interest on the original security deposit.

Issue ii: Is the Landlord entitled to compensation?

- [19] At the start of the tenancy the parties agreed the Tenants would pay 75% of the monthly electricity bills and the Landlord would pay 25%. In November 2023, the Landlord changed the agreement to the Landlord only paying \$25.00 of the electricity bills. The calculations comparing the Landlord paying 25% vs. \$25.00 of the bills are as follows:

Month	Bill	Less 25%	Less \$25.00	Difference
April	\$284.51	\$213.38	\$259.51	\$46.13
May	\$272.08	\$204.06	\$247.08	\$43.02

- [20] The calculations show that if the Landlord only paid \$25.00 as opposed to 25%, the Tenants would be paying \$46.13 more for April and \$43.02 more for May. This transfer of the electricity expenses from the Landlord to the Tenants is the equivalent to an unauthorized rent increase. The Officer finds that the Landlord is responsible for 25% of the electricity expenses and the Tenants are responsible for 75%, as agreed to at the beginning of the tenancy.
- [21] The Officer finds that the Tenants are responsible for the electricity expenses for April's bill in the amount of **\$213.38** and for May's bill, in the amount of **\$204.06**.
- [22] The Tenants agreed with the Landlord that they owe **\$37.75** for the outstanding fuel bill.

Issue iii: Do the Tenants owe the Landlord rent?

- [23] The Officer finds that the evidence establishes that the Tenants failed to provide proper notice to terminate the fixed-term agreement. The Officer agrees that the Tenants provided at least two months' notice to the Landlord, however the Act also states that the end of the fixed-term cannot be earlier than the date specified as the end of the tenancy, which in this case was May 31, 2024.
- [24] However, a landlord is required to properly mitigate their losses by seeking a new tenant as soon as possible. The Landlord's evidence is that he could not secure a new tenant until May 18, 2024. The Officer notes that in the new tenancy agreement, the Landlord increased the rent by \$50.00 per month but did not increase his portion of the utilities by the same amount. The Officer finds that this an unauthorized rent increase.
- [25] The Officer notes that without this unauthorized rent increase, the Landlord may have been able to secure a new tenant before May 18. Based on the evidence, the Officer finds that the Landlord did not properly mitigate his losses and is not entitled to rent owing for May 2024.

CONCLUSION

- [26] The Tenant Application is allowed. The Landlord must pay the Tenants double the security deposit plus interest on the original security deposit in the amount of **\$4,264.40**.
- [27] The Landlord Application is allowed in part. The Tenants owe the Landlord **\$455.19** in utilities.
- [28] The amounts owing are offset and the Landlord shall pay the Tenants **\$3,809.21** by the timeline below.

[29] The calculations are as follows:

Item	Amount
Security Deposit	\$2,100.00
Interest (May 2, 2023 – August 14, 2024)	\$64.40
Double Security Deposit	\$2,100.00
Less Electricity	(\$417.44)
Less Oil	(\$37.75)
Total Owing to the Tenants	\$3,809.21

IT IS THEREFORE ORDERED THAT

I. The Landlord shall pay the Tenants **\$3,809.21** by September 3, 2024.

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