

INTRODUCTION

- [1] On August 5, 2024 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* with the Residential Tenancy Office (the “Rental Office”) seeking to retain the Tenant’s security deposit for unpaid rent (the “Application”).
- [2] On August 22, 2024 the Rental Office mailed and emailed the parties the Application and notice of a teleconference hearing scheduled for 9:00 a.m. on September 12, 2024.
- [3] On September 10, 2024 the Rental Office emailed the parties an evidence package containing a 30-page PDF document and one video (the “Evidence Package”).
- [4] On September 11, 2024 the Rental Office emailed the parties notice of a teleconference hearing rescheduled for 9:00 a.m. on September 19, 2024.
- [5] On September 19, 2024 the Residential Tenancy Officer (the “Officer”), the Landlord’s representatives (the “Representatives”) and the Tenant participated in the teleconference hearing. The parties confirmed receipt of the Evidence Package.

ISSUE

Can the Landlord retain the Tenant’s security deposit?

SUMMARY OF EVIDENCE

- [6] The Unit is a two-bedroom, one-bathroom apartment located in a 12-unit building that the Landlord has operated for approximately 30 years.
- [7] The Landlord and the Tenant entered into a written, fixed term tenancy agreement for the period of May 1, 2020 to April 30, 2021. A \$391.00 security deposit was paid on April 3, 2020. At the end of the fixed term the tenancy continued on a month-to-month basis. Rent in the amount of \$886.00 was due on the first day of the month.
- [8] On July 8, 2024 the Tenant telephoned the Landlord stating that the Tenant intended to move out of the Unit by July 28, 2024. On July 10, 2024 the Tenant attended the Landlord’s office and signed a notice of termination (the “Notice”). The effective date of August 31, 2024 was scratched out and replaced with an effective date of July 31, 2024.

Landlord’s Evidence and Submissions

- [9] The Landlord’s evidence is summarized as follows.
- [10] On July 10, 2024 the Tenant completed the Notice at the Landlord’s office and provided it to the Landlord. At that time, the Landlord explained to the Tenant that she would be responsible for August 2024 rent if the Landlord was unable to re-rent the Unit. The Tenant asked the Landlord not to access the Unit until after July 20, 2024 so that she could have it all cleaned up.
- [11] The Representatives viewed the Unit on July 18, 2024 and it was not showable at that time. The Landlord had difficulty walking through the Unit because of the amount of stuff. The Landlord advised the Tenant that the Unit would not be shown until it was sufficiently clean.
- [12] The Landlord returned to the Unit on July 23, 2024 and the Unit was showable. The Landlord then advertised the Unit.

- [13] Around July 30 or 31, 2024 the Landlord found a new tenant to move into the Unit for August 16, 2024. The Landlord explained to the Tenant that she would only be responsible for part of August 2024's rent.
- [14] The Tenant placed a stop payment with her bank for August 2024 rent.

Tenant's Evidence and Submissions

- [15] The Tenant's evidence is summarized as follows. The Tenant submits that the Landlord did not make enough effort to find a new tenant for the Unit.
- [16] On July 10, 2024 the Tenant told the Landlord that she would be "*more out of the Unit*" by July 20, 2024 but if the Landlord needed to see the Unit sooner, then the Landlord could telephone the Tenant. The Tenant stated that she had a lot of stuff in the Unit but it was not messy.
- [17] The Tenant did not hear anything from the Landlord until the Tenant called the Landlord on July 23, 2024 to ask if the Landlord was coming by. The Landlord asked to come by immediately but that did not work for the Tenant. The Landlord came by the next day and said the Unit was messy and there were a lot of moving boxes around.
- [18] The Tenant moved out of the Unit on July 27, 2024 and the Tenant had the Unit fully cleaned by July 28, 2024.
- [19] On July 30, 2024 the Tenant received a telephone call from the Landlord advising that a new tenant had been found to move-in mid-August 2024.

ANALYSIS

- [20] For the reasons below, the Officer finds that the Landlord is permitted to retain the Tenant's security deposit, including interest, for pro-rated August 2024 rent.
- [21] The timeline for the Tenant to end the tenancy agreement by notice is provided in subsection 55(2) of the *Residential Tenancy Act*, which states:

A tenant may end a month-to-month or other periodic 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;
and

(b) is the day before the day that rent is payable under the tenancy agreement.

- [22] Rent was due on the first day of the month. If the Tenant wanted to terminate the tenancy agreement by notice as of July 31, 2024, then Tenant was required to serve the Landlord with a notice of termination by June 30, 2024.
- [23] The Tenant's notice of termination dated July 10, 2024 terminated the tenancy agreement as of August 31, 2024. Therefore, the Tenant was at risk of owing rent to the Landlord for the entire month of August 2024, in the amount of \$886.00.
- [24] The Landlord had a duty to mitigate (reduce) its losses by attempting to re-rent the Unit.
- [25] The adequacy of a landlord's mitigation efforts is related to the size of a landlord's potential rent owing claim against a tenant.¹ For instance, where a tenant enters into a fixed term tenancy

¹ See Island Regulatory and Appeals Commission Order LR20-39, available at the following website: <https://irac.pe.ca/wp-content/uploads/LR20-39.html>

agreement with a landlord and the tenant moves out several months before the end of the term, the landlord would be facing a potential income loss of several months' rent and extensive mitigation efforts would be expected.

- [26] In this case the Landlord is seeking to retain the Tenant's security deposit for a lower amount, about half a month's rent.
- [27] The evidence of both parties establishes that the Tenant had a significant amount of personal property in the Unit. It appears to the Officer that it was reasonable for the Landlord to wait until a significant amount of the property was removed before showing the Unit to prospective tenants.
- [28] On or about July 30, 2024 the Landlord accepted a new tenant for the Unit, with the tenancy agreement commencing August 16, 2024. The new tenant was accepted by the Landlord approximately 20 days after the Tenant served the Notice. It appears to the Officer that, in the circumstances of this case, the Landlord engaged in reasonable efforts to re-rent the Unit, which reduced the Landlord's rental income losses and the Tenant's liability for rent by approximately 50%.
- [29] Therefore, the Officer finds that the Landlord is permitted to retain the Tenant's security deposit, including interest, for pro-rated August 2024 rent.
- [30] The Officer calculates the security deposit to be \$411.09, including interest, for the period of April 3, 2020 to September 23, 2024, the date of this decision.

CONCLUSION

- [31] The Application is allowed.
- [32] The Landlord will retain the Tenant's security deposit, including interest, for rent owing for the period of August 1 to August 15, 2024.

IT IS THEREFORE ORDERED THAT

1. The Landlord will retain the Tenant's security deposit, including interest, in the amount of \$411.09 for rent owing for the period of August 1 to August 15, 2024.

DATED at Charlottetown, Prince Edward Island, this 23rd day of September, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
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.