

INTRODUCTION

- [1] The Landlords seek to retain the Tenant's security deposit of \$1,700.00 for outstanding rent for the month of August 2024.

DISPOSITION

- [2] I find that the Landlords must return the Tenant's security deposit with interest as the Landlords have failed to properly mitigate their loss. The Unit was advertised at \$1,700.00 per month, when it should have been advertised at \$695.00 per month.
- [3] I find that the lawful rent for the Unit is \$695.00 per month.

BACKGROUND

- [4] On July 18, 2024 the parties entered into a written, fixed-term tenancy agreement for the period of August 1, 2024 to July 31, 2025. Rent was \$1,700.00 due on the first day of the month. A \$1,700.00 security deposit was paid on July 19, 2024.
- [5] On July 20, 2024 the Tenant moved into the Unit.
- [6] On July 28, 2024 the Tenant vacated the Unit.
- [7] On July 30, 2024 the Landlords filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks to retain the Tenant's security deposit. The Landlords emailed the Application to the Tenant's representative.
- [8] The Application also sought compensation exceeding the Tenant's security deposit. However, at the hearing, the Landlords withdrew this claim.
- [9] On August 14, 2024 the Rental Office mailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [10] On September 11, 2024 the Rental Office emailed the parties an evidence package (the "Evidence Package").
- [11] On September 16, 2024 the Rental Office emailed the parties a copy of Order LD23-546 issued on November 24, 2023 and is publically available on the Rental Office's website. This decision states that the rent for the Unit is \$695.00, and the Landlords stated included no services (the "Director's Exhibit").
- [12] On September 17, 2024 the Landlords, the Tenant and the Tenant's representative participated in the hearing.
- [13] At the beginning of the hearing, the Application was amended to include both the Landlords' names, and to remove one of the respondents from the Application.

ISSUES

- A. Are the Landlords entitled to retain the Tenant's security deposit?
- B. What is the lawful rent for the Unit?

ANALYSIS**A. Are the Landlords entitled to retain the Tenant's security deposit?**

- [14] For the reasons below, I find that the Landlords are not entitled to retain the Tenant's security deposit because they have failed to properly mitigate their losses.
- [15] The timeline for the Tenant to end the tenancy agreement by notice is provided in subsection 55(3) of the *Residential Tenancy Act* (or the "Act"), which states:
- 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.*
- [16] The Landlords stated that the Tenant was permitted to move into the Unit on July 20, 2024, despite the Unit not being fully ready for occupancy. The Landlords did not charge rent to the Tenant until August 1, 2024. The Landlords stated that the Tenant did not raise any concerns about the Unit.
- [17] On July 24, 2024 the Tenant's representative sent a text message to the Landlords informing them that the Tenant was vacating the Unit on July 28, 2024.
- [18] The Landlords stated that 4 days' notice to vacate was improper notice. The Landlords advertised the Unit immediately for \$1,700.00. A new tenant was found for September 1, 2024. The Landlords were unable to re-rent the Unit at \$1,700.00 for August 2024. The Landlords seek to retain the Tenant's security deposit of \$1,700.00 for rent for the month of August 2024.
- [19] The Tenant stated that the Landlord orally agreed to return the security deposit once a new tenant was found. The Tenant was not given the opportunity to sublet the Unit for the month of August 2024. The Tenant stated that the Landlords could have rented the Unit for August 1, 2024, but denied the prospective tenant.
- [20] After reviewing the evidence, I find that the tenancy agreement was signed on July 18, 2024, the Tenant moved into the Unit on July 20, 2024, however, on July 24, 2024 provided notice to the Landlords, and on July 28, 2024 the Tenant vacated the Unit.
- [21] I find that the Tenant did not comply with the notice requirements to end a fixed-term tenancy agreement set out in subsection 55(3) of the Act.
- [22] Despite the Tenant's improper notice, the Landlords advertised the Unit promptly for \$1,700.00. If the Landlords had advertised the Unit at the lawful rent of \$695.00, then the Landlords may have avoided any rental income losses. Therefore, I find that the Landlords did not properly mitigate their losses in this case.
- [23] The Application is denied. The Landlords shall return the Tenant's security deposit and interest in the total amount of \$1,707.84 by the timeline below.

B. What is the lawful rent for the Unit?

- [24] For the reasons below, I find that the Landlords have not complied with subsection 47(1) of the Act. Therefore, the lawful rent for the Unit is \$695.00 per month.

- [25] Included in the Evidence Package was a copy of the *Form 1 Standard Form of Tenancy Agreement* dated July 18, 2024. The tenancy agreement states that rent for the Unit is \$1,700.00, and the included services were: heat, hot water, electricity, internet and one parking spot.
- [26] Further, the Director's Exhibit was included in the evidentiary record. Order LD23-546 was issued on November 24, 2023, and is publically available on the Rental Office's website. This decision states that the rent for the Unit is \$695.00, and the Landlord stated included no services.
- [27] At the hearing, the Landlords stated that the previous tenant lived in the Unit for nine years without a rent increase, and may have been friends with the former landlord. There was no written tenancy agreement, and there were no included services. When the former tenant vacated the Unit in March of 2024, a lot of renovations were completed in the Unit. The Landlords increased the rent to market rent, with included services.
- [28] After reviewing the Director's Exhibit, the documentary evidence, particularly the tenancy agreement dated July 18, 2024, and hearing the Landlords' testimony, I find that the Landlords did not comply with PART 3 of the Act. The law states in part:

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.*

49. Allowable annual rent increase

- (1) *No landlord shall increase the rent charged for a rental unit by more than the allowable annual increase, except in accordance with section 50.*

- [29] The Landlords provided explanations to why the rent was increased, however, these reasons do not exempt the Landlords from compliance with PART 3 of the Act.
- [30] Further, I find that the inclusion of the listed services in the tenancy agreement dated July 18, 2024 do not justify the \$1,005.00 rent increase without the approval of the Rental Office.

Requirements for a Tenancy Agreement

- [31] Since April 8, 2023 landlords on Prince Edward Island have been required to prepare a written tenancy agreement containing specific information, including the previous rent charged. Subsections 11(1) and (2) of the Act states in part:

11. Tenancy agreement in writing

- (1) *A landlord shall prepare a written tenancy agreement in respect of a tenancy that is entered into on or after the date this Act comes into force.*

Formal requirements

- (2) *The landlord shall ensure that the tenancy agreement complies with the requirements of this Act and the regulations and includes*

...

- (g) *the amount of rent that was charged, and the services and facilities that were provided, to the previous tenant of the rental unit, unless there was no previous tenant;*

[32] The tenancy agreement dated July 18, 2024 does not disclose the previous tenant's rent, which would have been \$695.00. This section of the tenancy agreement only states "(N/A)". This is not only inaccurate; it is non-compliant with clause 11(2)(g) of the Act.

[33] The Landlords must comply with all requirements set out in the Act, and failure to do so may result in an investigation.

IT IS THEREFORE ORDERED THAT

1. The Landlords must pay the Tenant \$1,707.84 by October 24, 2024.
2. The lawful rent for the Unit is set at \$695.00 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 4th day of October, 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.