

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On July 10, 2024, the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the “First Application”) with the Residential Tenancy Office (the “Rental Office”) seeking rent owing, vacant possession of the Unit, permission to retain the security deposit, and compensation above the security deposit. A copy of the Application was emailed to the Tenant and posted to the door of the Unit on July 4, 2024.
- [3] The First Application was supported by a *Form 4 (A) Eviction Notice* (the “Notice”). The Notice was dated June 7, 2024, effective June 27, 2024, and was emailed to the Tenant and posted to the door of the Unit, on June 7, 2024. The Notice states:
- You have not paid your rent in the amount of \$1,236.00*
- [4] On July 10, 2024, the Rental Office emailed the Representative seeking further information regarding the First Application.
- [5] On August 1, 2024, the Representative responded to the Rental Office and stated that there were still some of the Tenant’s personal belongings in the Unit as of July 20, 2024, and the Representative believed the Tenant was still living in the Unit. On August 1, 2024, the Landlord filed an amended *Form 2(B)* (the “Second Application”) with the Rental Office seeking vacant possession of the Unit and outstanding rent. A copy was posted to the door of the Unit on July 31, 2024.
- [6] On August 6, 2024, a notice of teleconference hearing was mailed and emailed to the parties for a hearing on August 15, 2024.
- [7] On August 12, 2024, an evidence package was emailed to the parties. The Landlord was asked to serve a copy to the Tenant.
- [8] On August 15, 2024, the Landlord notified the Rental Office that the Landlord was unable to serve a copy of the evidence package to the Tenant prior to the hearing. The hearing did not proceed on this date.
- [9] On August 15, 2024, the Landlord filed an amended *Form 2(B)* (the “Third Application”) with the Rental Office seeking rent owing and vacant possession of the Unit. A copy of the evidence package and the Third Application was emailed to the Tenant and posted to the door of the Unit on this date by the Landlord.
- [10] On August 29, 2024, the Landlord filed an amended *Form 2(B)* (the “Fourth Application”) with the Rental Office seeking rent owing, permission to retain the security deposit, compensation above the security deposit, and to dispose of the Tenant’s personal property. A copy of the Application was emailed to the Tenant on the same date by the Landlord. The Fourth Application replaced all previous applications.
- [11] On September 5, 2024, a notice of teleconference hearing was emailed to the parties for a hearing on October 3, 2024.
- [12] On September 25, 2024, an evidence package and a supplementary evidence package were emailed to the parties.

- [13] On October 3, 2024, a teleconference hearing was held. Two Landlord representatives (the "Representatives") called into the hearing. The Rental Office called the Tenant and left a voicemail. The hearing was postponed for ten minutes and then the hearing proceeded in the Tenant's absence.

ISSUES

- i. Is Landlord entitled to rent owing?
- ii. Is the Landlord entitled to retain the security deposit and additional compensation?
- iii. Is the Landlord permitted to dispose of the Tenant's personal property?

SUMMARY OF EVIDENCE

- [14] The Unit is a single apartment in a multi-unit building (the "Residential Property"). In January 2023, the Landlord purchased the Residential Property and the Tenant was already living in the Unit. The Representatives do not know when the Tenant first moved into the Unit.
- [15] In January 2023, the parties entered into an oral month-to-month tenancy agreement for the Unit. Rent was \$1,236.00 due on the first day of the month and a security deposit of \$500.00 was paid to the previous landlord and transferred to the Landlord. The Representatives do not know when the security deposit was paid to the previous landlord. The first rent paid to the Landlord was on January 19, 2023.

EVIDENCE AND SUBMISSIONS

The Representatives' evidence is summarized as follows.

- [16] The Tenant failed to pay rent for June 2024 and the Notice was served to the Tenant by email and posted to the door of the Unit on June 7, 2024. The Tenant also failed to pay rent for July 2024. On July 4, 2024, the Landlord emailed the Tenant the First Application and posted a copy to the door of the Unit.
- [17] On July 4, 2024, a Landlord representative entered the Unit to complete a wellness check as the Landlord had not seen or heard from the Tenant. The representative observed food, plants, and some personal items in the Unit. No contact was made with the Tenant at that time. Some of the other tenants of the Residential Property told the Landlord that they may have seen the Tenant coming and going from the Residential Property, but no one could say for sure.
- [18] On July 31, 2024, the Second Application was posted to the door of the Unit and the First Application was still attached to the door. On August 15 and August 29, 2024, the Third and Fourth Applications were posted to the door of the Unit.
- [19] On August 29, 2024, the Landlord contacted the police and requested a wellness check as the Landlord was unable to contact the Tenant. The police did not update the Landlord if the Tenant was located or spoken to.
- [20] On August 29, 2024, the Landlord filed the Fourth Application with the Rental Office as the Landlord believed the Tenant had abandoned the Unit. On September 17, 2024, the Landlord regained possession of the Unit. When the Landlord entered the Unit on September 17, the interior of the Unit appeared to be the same as when the Landlord entered the Unit on July 4, 2024.
- [21] The Landlord had to dispose of some of the Tenant's property which were a health hazard. The Landlord still has a sweater belonging to the Tenant, which the Representatives are requesting permission to dispose of. The Landlord is also seeking rent owing for June, July, August, and up to September 17, 2024. A copy of the Tenant's rental ledger was submitted into evidence. On October 15, 2024, the Landlord emailed a copy of the Inventory List to the Tenant.

ANALYSIS**Issue i. Is the Landlord entitled to rent owing?**

[22] The Representatives testified that the Tenant failed to pay rent for June 2024 and the Landlord served the Notice on June 7, 2024, effective June 27, 2024. The Tenant did not pay the outstanding rent for June 2024 within ten days of being served the Notice. Therefore, the Notice was not invalidated pursuant to clause 60(4)(a) of the Act which states:

Tenant may dispute notice or pay unpaid rent

- (4) *Within 10 days after receiving a notice of termination under this section, the tenant may*
- (a) *pay the overdue rent, in which case the notice of termination has no effect; or*
 - (b) *dispute the notice of termination by making an application to the Director under section 75.*

[23] The Tenant did not file an application with the Rental Office to dispute the Notice. I find that the Tenant is deemed to have accepted the end of the tenancy (June 27, 2024) pursuant to clause 60(5) of the Act, which states:

Tenant presumed to accept notice

- (5) *Where a tenant who has received a notice of termination under this section does not pay the rent or make an application to the Director in accordance with subsection (4), the tenant*
- (a) *is deemed to have accepted that the tenancy ends on the effective date of the notice of termination; and*
 - (b) *shall vacate the rental unit by that date.*

[24] The Representatives do not know the exact date the Tenant vacated the Unit. I find that the Landlord has not established that the Tenant was still living in the Unit after the effective date on the Notice of June 27, 2024. The presence of some personal property in the Unit does not mean that the Tenant continued to reside there.

[25] I find that the tenancy between the parties ended on June 27, 2024, and the Landlord has established that the Tenant owes rent from June 1, 2024, to June 27, 2024, totaling **\$1,112.40**. (\$1,236.00 divided by 30 days = \$41.20 per day. \$41.20 x 27 days = \$1,112.40.)

Issue ii. Is the Landlord entitled to retain the security deposit and additional compensation?

[26] As I have found that the Tenant owes \$1,112.40 in outstanding rent, I find that the Landlord will retain the \$500.00 security deposit, plus \$20.80 in interest. I further find that the Landlord is entitled to additional compensation above the security deposit in the amount of \$591.60.

[27] As the Landlord is unsure when the security deposit was paid to the previous landlord, the interest is calculated from the first date the Tenant paid rent to the Landlord, which was January 19, 2023.

Issue iii. Is the Landlord permitted to dispose of the Tenant's personal property?

[28] I have reviewed the Inventory List and testimony of the Representatives. I am satisfied that the Tenant has abandoned this personal property. I find that the personal property remaining in the Unit either has no monetary value or the cost of removing, storing, or selling the property would be more than the proceeds of the sale.

[29] As a result, the Fourth Application for disposal of the Tenant's personal property in the Inventory List is valid. The Landlord may dispose of the personal property contained in the Inventory List through the solid waste disposal system on or after November 5, 2024.

CONCLUSION

- [30] The Fourth Application is allowed in part.
- [31] The Landlord will retain the security deposit and interest in the amount of \$520.80.
- [32] The Tenant must pay the Landlord \$591.60 for rent owing by the timeline below.
- [33] The Landlord may dispose of the personal property contained in the Inventory List through the solid waste disposal system on or after the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Landlord will retain the security deposit and interest in the amount of \$520.80.
2. The Tenant must pay the Landlord \$591.60 by November 5, 2024.
3. The Landlord may dispose of the personal property contained in the Inventory List through the solid waste disposal system on or after November 5, 2024.

DATED at Charlottetown, Prince Edward Island, this 16th day of October, 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.