

PRELIMINARY MATTER

- [1] At the hearing the parties both agreed to include the determination of the security deposit in this Order, despite neither party filing an application for the security deposit.

INTRODUCTION

- [2] The Tenants seek termination of their tenancy agreement with the Landlord effective July 31, 2024.
- [3] The Tenants seek a monetary order against the Landlords for a return of rent for August 2024 and September 2024, in the total amount of \$2,618.00.
- [4] The Tenants seek the return of the security deposit plus interest, post the preliminary matter.
- [5] The Landlord seeks to retain a portion of the Tenants' security deposit, in the amount of \$1,201.67 for rental arrears and electricity services, post the preliminary matter.

DISPOSITION

- [6] I find that the tenancy agreement ended, by mutual agreement on July 31, 2024.
- [7] I find that the Tenants are entitled to a return of rent, parking and storage fees for August 2024 and September 2024, in the total amount of \$2,618.00.
- [8] I find that the Landlord may retain \$15.98 from the Tenants' security deposit for electricity services.
- [9] I find that the Landlord must return the Tenants' security deposit and interest in the amount of \$1,552.02.

BACKGROUND

- [10] The Unit is a two-bedroom and two-bathroom apartment situated in a 98-unit building.
- [11] On September 21, 2022 the parties entered into a written, fixed-term tenancy agreement for the period of October 31, 2022 to October 30, 2023. On September 29, 2023 the parties renewed the fixed-term for the period of November 1, 2023 to October 31, 2024. In September of 2022 a \$1,440.00 security deposit was paid.
- [12] Rent in the amount of \$1,483.00 was due on the first day of the month. The Tenants also paid \$160.00 each for parking and \$40.00 for storage each month.
- [13] On July 29, 2024 the Tenants vacated the Unit.
- [14] On August 22, 2024 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks termination of the fixed-term tenancy agreement and a return of rent for August 2024 and September 2024. On August 30, 2024 and September 20, 2024 the Application was amended. The Tenants emailed the Application to the Landlord's representative (the "Representative").
- [15] On September 11, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [16] On September 27, 2024 the Rental Office emailed the parties an evidence package.
- [17] On October 1, 2024 the Tenants and the Representative participated in the hearing for determination of the Application. The parties confirmed receipt of the evidence package.

ISSUES

- A. When does the tenancy agreement end?
- B. Are the Tenants entitled to a return of rent?
- C. Is the Landlord entitled to retain a portion of the Tenants' security deposit?

ANALYSIS**A. When does the tenancy agreement end?**

- [18] For the reasons below, I find that the tenancy agreement ended, by mutual agreement on July 31, 2024.
- [19] On August 4, 2023 the Representative requested an update regarding whether or not the Tenants were renewing their fixed-term agreement for an additional year. The Tenants responded requesting that upon the expiration of the fixed-term the tenancy, they wished to continue the tenancy on a month-to-month basis. The Tenants stated that the Representative only permitted them to extend with another fixed-term agreement.
- [20] On September 29, 2023 the Tenants stated that they reluctantly signed a new one year fixed-term agreement ending October 31, 2024.
- [21] On July 3, 2024 the Tenants informed the Representative that they purchased a house and would be vacating the Unit by August 1, 2024. The Representative responded by requesting the Tenants complete a *Form 3 Tenant Notice of Termination* and that they would be responsible for the fixed-term until the Unit was re-rented.
- [22] On July 26, 2024 the Representative informed the Tenants that a new tenant was found for August 1, 2024. The Representative stated that the new tenants were going to be signing the tenancy agreement on Monday, July 29, 2024. The Tenants stated that they could vacate by this time.
- [23] On July 29, 2024 the Tenants vacated the Unit and completed a move-out inspection with the maintenance manager.
- [24] On August 1, 2024 the Representative responded to the Tenants' email correspondence, and informed the Tenants that the new tenants did not sign the tenancy agreement and did not move into the Unit. The Representative stated that they would continue looking for new tenants for September 1, 2024.
- [25] The Tenants stated that they believed the tenancy ended on July 31, 2024. The Tenants stated that they booked a moving truck and rushed to remove all their belongings by July 29, 2024 based on their discussion with the Representative on July 26, 2024.
- [26] The Representative stated that she advertised the Unit, however, a two-bedroom apartment is harder to rent than a one-bedroom. The Representative stated that the Unit is still vacant as of the hearing date.
- [27] On September 9, 2024 the Representative served the Tenants a *Form 4 (A) Eviction Notice* for non-payment of rent, effective September 30, 2024.

- [28] Subsections 51(3), 52(1) and 55(3) of the *Residential Tenancy Act* (or the “Act”) state:
- (3) *A landlord and a tenant may make a written agreement, other than a tenancy agreement, to end a tenancy.*
 - (1) *Where a tenancy agreement ends on a specific date and does not include an option to renew, and the landlord has not terminated the agreement in accordance with Division 3 of this Part, the landlord and tenant are deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with this Act.*
 - (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.*
- [29] I have reviewed the evidence, specifically the two tenancy agreements signed by the parties. I find that neither the September 21, 2022 or the September 29, 2023 tenancy agreement has an option to renew clause. The parties could have continued their tenancy on a month-to-month basis pursuant to clause 52(1) of the Act. However, the parties signed another fixed-term agreement and were required to follow the notice requirements outlined in clause 55(3) of the Act.
- [30] On July 3, 2024 the Representative reminded the Tenants that despite their efforts to find new tenants, the Tenants would still be responsible for their tenancy agreement until the end of the fixed-term.
- [31] I find that despite the 55(3) obligations of the Tenants, on July 26, 2024 the Representative contacted the Tenants and told them that prospective tenants were found for August 1, 2024. The Representative asked if the Tenants were still vacating the Unit “this week” because the prospective tenants were going to sign their tenancy agreement on Monday, July 29, 2024. The Tenants stated that they promptly rented a U-Haul, removed all their personal belongings and vacated the Unit. A move-out inspection was completed with the maintenance manager and the keys returned.
- [32] However, the prospective tenants did not sign the tenancy agreement to move into the Unit. The Representative did not tell the Tenants this update, and it was the Tenants on July 31, 2024 who sought an update from the Representative and got an email response on August 1, 2024 after they had vacated.
- [33] After considering the parties’ obligations under the Act and carefully reviewing the email correspondence between the parties, I find that it was reasonable for the Tenants to have believed that the parties mutually agreed to end the tenancy effectively July 31, 2024. The Tenants were told that a prospective tenant was going to be moving into the Unit on August 1, 2024. I find that despite the prospective tenants not signing their tenancy agreement and not moving into the Unit, the Tenants promptly followed what they believed to be the Representatives request to vacate the Unit, and to not cause any delays in the prospective tenants being able to move into the Unit.
- [34] Based on the email correspondence of the parties between July 3, 2024 and August 1, 2024, and the conduct of the Landlord, I find that the tenancy agreement ended, by mutual agreement on July 31, 2024.

B. Are the Tenants entitled to a return of rent?

[35] For the reasons below, I find that the Tenants are entitled to their monetary order in the total amount of \$2,618.00.

[36] It is undisputed that the Tenants' rent was taken from their bank account each month by direct deposit. The monthly direct deposit payment would include:

- Base rent: \$1,483.00;
- Parking: \$320.00 (\$160.00 each); and
- Storage: \$40.00.

After the Tenants had vacated, the Representative advised the Tenants that the prospective tenants did not sign the tenancy agreement and that the Tenants would be responsible for the rent and electricity services. The total amount of \$1,843.00 was taken from the Tenants' bank account for August of 2024.

[37] On September 1, 2024, a \$1,843.00 payment was made from the Tenants' bank account via direct deposit. On September 5, 2024, the Tenants stopped a portion of the transaction and \$1,068.00 was reversed and returned to the Tenants' bank account. The remaining \$775.00 was paid on September 1, 2024 and remains with the Landlord.

[38] As the tenancy agreement ended, by mutual agreement on July 31, 2024, therefore, the Tenants' monetary order for a return of rent is allowed and is calculated as follows:

Item	Amount
August 2024 rent	\$1,483.00
August 2024 parking	\$320.00
August 2024 storage	\$40.00
½ September 2024 rent	\$775.00
Return of rent total	\$2,618.00

C. Is the Landlord entitled to retain a portion of the Tenants' security deposit?

[39] For the reasons below, I find that the Landlord is entitled to retain \$15.98 from the Tenants' security deposit. The Landlord must return the remaining balance to the Tenant by the timeline below.

[40] Subsection 40(1) of the Act states:

- (1) *Except as provided in subsection (2) or (3), within 15 days after the date the tenancy ends or is assigned, the landlord shall either*
- (a) *issue payment, as provided in subsection (5), of any security deposit to the tenant with interest calculated in accordance with the regulations; or*
 - (b) *make an application to the Director under section 75 claiming against the security deposit.*

[41] The Representative stated that the Landlord's intention was to retain the security deposit to cover the Tenants' rental arrears and outstanding utility bills for August 2024 and September 2024. The Landlord did not file a *Form 2 (B) Landlord Application to Determine Dispute* with the Rental Office because it was the Representative's position that the tenancy did not end until September 30, 2024.

[42] At the hearing, the parties agreed that this decision would include a determination of the security deposit, despite neither party filing an application for the security deposit.

- [43] For the reasons above, I found that the tenancy ended July 31, 2024. This means the Landlord would have had until August 15, 2024 to either return the security deposit or file an application with the Rental Office. However, I find that the Landlord could not have complied with subsection 40(1) of the Act because it was the Landlord’s genuine belief that the tenancy was still in effect.

- [44] Clause 40(3)(b) of the Act provides an exemption to subsection 40(1), which states:
 - (3) *A landlord may retain an amount from a security deposit if*
 - (b) *after the end of the tenancy, the Director orders that the landlord may retain the amount.*

- [45] In these circumstances, I find that subsection 40(4) is not triggered and is exempted pursuant to clause 40(3)(b) of the Act. Further, the parties mutually agreed to the determination of the security deposit at this hearing.

- [46] For the reasons cited, I found that the Tenants are entitled to a return of rent. Therefore, I find that the Landlord’s claim to retain a portion of the security deposit for rental arrears is denied.

- [47] The Landlord is also seeking to retain a portion of the security deposit for outstanding electricity bills. I find that the evidence establishes that electricity was the responsibility of the Tenants. Therefore, the Tenants are responsible for the electricity costs up to the end of the tenancy, which is July 31, 2024.

- [48] The Landlord submitted into evidence a Maritime Electric bill with the consumption period from July 30, 2024 to August 8, 2024 in the amount of \$71.98. I find that the Tenants are responsible for two days of consumption (July 30-31, 2024). Therefore, the Landlord can retain \$15.98 from the security deposit for two days of electricity costs ($\$71.98 / 9 \text{ days} \times 2 \text{ days}$). The Landlord must return the remaining balance of the security deposit and interest to the Tenants by the timeline below.

Item	Amount
Security Deposit	\$1,440.00
Interest (21 SEP 2022 to 23 OCT 2024)	\$61.67
Less amount retained by Landlord	(\$15.98)
Total returned to Tenants	\$1,485.69

CONCLUSION

- [49] The tenancy agreement terminated on July 31, 2024.

- [50] The Landlord must return \$2,618.00 in rent to the Tenants.

- [51] The Landlord may retain \$15.98 from the Tenants’ security deposit.

- [52] The Landlord must return the Tenants’ security deposit and interest in the amount of \$1,485.69

IT IS THEREFORE ORDERED THAT

1. The tenancy agreement terminated on July 31, 2024.
2. The Landlord may retain \$15.98 from the Tenants' security deposit.
3. The Landlord must pay the Tenants the total amount of \$4,103.69 (\$2,618.00 plus \$1,485.69) by November 12, 2024.

DATED at Charlottetown, Prince Edward Island, this 23rd 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.