

INTRODUCTION

- [1] The Landlord seeks rent owing and permission to retain the security deposit.
- [2] The Tenants seek a return of rent, a recovery of an overpayment of the security deposit, a determination the Landlord failed to maintain the Unit, and compensation for a breach of the Act.

DISPOSITION

- [3] The Landlord Application is allowed in part and the Tenant application is allowed in part.
- [4] I find that the Landlord must pay the Tenants the net amount of \$881.99.

BACKGROUND

- [5] On January 30, 2024, the parties entered into a written, fixed-term tenancy agreement for the period of February 1, 2024, to January 31, 2025. On January 31, 2024, the Tenants paid a \$2,000.00 security deposit to the Landlord. Rent in the amount of \$2,000.00 was due on the first day of the month. On May 2, 2024, the Tenants vacated the Unit.
- [6] On May 13, 2024, the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord Application seeks rent owing and permission to retain the security deposit.
- [7] On April 19, 2024, the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office. The Tenant Application seeks a return of rent, a recovery of an overpayment of the security deposit, a determination the Landlord failed to maintain the Unit, and compensation for a breach of the Act.
- [8] On July 9, 2024, the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for July 30, 2024.
- [9] On July 26, 2024, the Rental Office notified the parties that the teleconference hearing scheduled for July 30, 2024, was being postponed as further clarification was required regarding both applications.
- [10] On September 25, 2024, the Rental Office mailed and emailed the parties notice of a rescheduled teleconference hearing scheduled for October 17, 2024.
- [11] On October 11, 2024, the Rental Office emailed the parties an evidence package.
- [12] On October 17, 2024, a Tenant, representing both Tenants, and the Landlord, participated in a teleconference hearing. The parties confirmed they both received the evidence package all documents submitted to the Rental Office were included.

PRELIMINARY MATTERS

- [13] At the beginning of the hearing the parties agreed to some of the matters in the applications. The parties agreed the Tenants owe \$298.00 in outstanding electricity expenses. The parties agreed rent should have been \$1,400.00 and that the Landlord charged the Tenants an unauthorized rent increase of \$600.00 per month for February and March 2024. The Tenants only paid \$1,400.00 for April, 2024. The parties agreed that the security deposit should have been \$1,400.00 and the Tenants overpaid the security deposit by \$600.00.
- [14] The Tenant disputed that the Tenants owe rent to the Landlord. The Landlord disputed that he breached the Act and stated the Tenants are not entitled to further compensation.

ISSUES

- A. Do the Tenants owe rent to the Landlord?
- B. Must the Landlord compensate the Tenants?

ANALYSIS**A. Do the Tenants owe rent to the Landlord?**

- [15] For the reasons below, I find that the Landlord has established that the Tenants owe rent to the Landlord for May 2024 (\$1,400.00), and from June 1 - June 14, 2024 (\$653.33), totaling \$2,053.33.
- [16] The June 2024 rent is calculated as:
- $\$1,400.00 / 30 \text{ days} = \$46.66 \text{ per day. } \$46.66 \text{ per day} \times 14 \text{ days} = \$653.33.$
- [17] The Tenant stated the Tenants vacated the Unit prior to the end of the fixed-term because there was mold on the windows and there may have been mold in the walls. The Unit and yard were not clean when they moved in and the Unit required repairs. Photographs of the Unit were submitted into evidence.
- [18] The Landlord stated that when the Tenants told him there may be mold, he attended the Unit that day. He told the Tenants to use the heat pump to minimize mold and he had the heat pump serviced. He denied the presence of any mold other than some surface mold. After the Tenants vacated on May 2, 2024, the Landlord cleaned and re-painted the Unit and advertised it for rent. The Landlord was unable to secure a new tenant until June 15, 2024.
- [19] I find that the Tenants have not provided sufficient evidence to justify vacating the Unit prior to the end of the fixed term. The submitted photographs do not show the presence of mold in the Unit and there is insufficient independent evidence, such as a report from Environmental Health, to establish that the Unit was not habitable due to the condition of the Unit.
- [20] I find that the Tenants did not comply with the notice requirements to end a fixed-term tenancy agreement set out in subsection 55(3) of the Act which states:

Notice for fixed-term tenancy

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.*

B. Must the Landlord compensate the Tenants?

- [21] For the reasons below, I find that the Tenants have not established that the Landlord has breached the Act or that the Tenants are entitled to compensation.
- [22] The Tenant stated the Tenants were without a stove for approximately two months. The Tenant's sister lived in the Unit before the Tenants and the Landlord was aware the stove was not working properly at that time. The Landlord only gave the Tenants \$100.00 in compensation and the Tenants believe they should be entitled to \$200.00 in compensation per month for two months.

- [23] The Landlord stated he ordered a new stove when the Tenants told him the old stove was not working. The Tenants were only without a stove for a few weeks while a new one was being delivered. The Landlord stated the parties already agreed that \$100.00 in compensation was sufficient.
- [24] I note that the Tenants submitted into evidence messages between the parties. On February 28, 2024, the Landlord asked the Tenants for the measurements of the stove. On March 25, 2024, the Tenants stated the stove had been delivered. I find that based on the submitted evidence, the Tenants were only without a working stove for less than one month. No evidence was submitted to establish that the Landlord knew the stove was not working prior to being notified by the Tenants.
- [25] I find that the evidence establishes that the Landlord ordered a new stove when he became aware of the broken stove. The Landlord compensated the Tenants \$100.00 for the loss of the use of this service while the new stove was being delivered, which I find was appropriate in this case. I find that the Landlord has complied with his obligations under the Act and the Tenants are not entitled to the further compensation.
- [26] The tenancy agreement does not disclose the previous tenant's rent, which was \$1,400.00. This section of the tenancy agreement is blank and is non-compliant with clause 11(2)(g) of the Act.

CONCLUSION

- [27] The Landlord Application is allowed in part and the Tenant Application is allowed in part.
- [28] The Landlord must return the unlawful rent overpayments for February 2024 (\$600.00) and March 2024 (\$600.00), totaling \$1,200.00.
- [29] The lawful rent for the Unit is set at \$1,400.00 per month. This amount is fixed and can only be increased by following the process set out in the Act.
- [30] The Landlord is entitled to retain the security deposit for rent owing and must return the security deposit overpayment.
- [31] The Tenants must pay the Landlord rent owed from May 1, 2024, to June 14, 2024 (\$2,053.33), and the outstanding electricity expense (\$298.00), totaling \$2,351.33.
- [32] The Tenants' request for additional compensation is denied.
- [33] The amounts owing and to be returned are offset. I find that the Landlord must pay the Tenants \$881.99, by the timeline below.
- [34] The amount owing is calculated as follows:

Item	Amount
Authorized Security Deposit	\$1,400.00
Overpayment of Security Deposit	\$600.00
Interest on \$2,000.00 (Jan. 31/24 – Oct. 28/24)	\$33.32
Overpayment of unlawful rent	\$1,200.00
Rent owing	(\$2,053.33)
Electricity expense owing	(\$298.00)
Total owed by the Landlord	\$881.99

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenants \$881.99 by November 18, 2024.
2. The lawful rent for the Unit is set at \$1,400.00 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 28th 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.