

INTRODUCTION

- [1] The Landlords claim against the Tenant for \$8,600.00 (\$8,400.00 in rent owing plus a \$200.00 cleaning fee). The Landlords seek to retain the Tenant's security deposit and request a monetary Order for the balance.

DISPOSITION

- [2] I find that the Landlords will retain the Tenant's \$2,100.00 security deposit for rent owing. The remainder of the Landlords' rent owing claim and the cleaning fee claim are denied.
- [3] The accumulated interest on the security deposit, in the amount of \$60.54, must be paid by the Landlords to the Tenant.

BACKGROUND

- [4] The Unit is a two-bedroom, two-bathroom apartment that the Landlords have owned since August of 2023.
- [5] The Landlords and the Tenant entered into a written, fixed-term tenancy agreement for the period of September 1, 2023 to August 31, 2024. On August 14, 2023 the Tenant paid the Landlords a \$2,100.00 security deposit. Rent in the amount of \$2,100.00 was due on the first day of the month.
- [6] The Tenant moved out of the Unit near the end of April 2024.
- [7] On May 1, 2024 the Landlords filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") claiming rent owing and a cleaning fee. The total rent owing in the Application was for the period of April to August 2024, in the amount of \$10,500.00. At the hearing the Landlords' rent owing claim was reduced by \$2,100.00 because the Unit was re-rented for the month of August 2024. The amended rent owing claim totals \$8,400.00.
- [8] On June 13, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for August 13, 2024, along with a copy of the Application.
- [9] On July 23, 2024 the Rental Office emailed the parties a 37-page evidence package.
- [10] On August 13, 2024 the Landlords' representative (the "Representative"), the Tenant and the Tenant's witness participated in a teleconference hearing.

ISSUES

- A. Does the Tenant owe rent to the Landlords?
- (1) Did the Landlords inform the Tenant of her rights and obligations to sublet or assign the entire Unit? Did the Representative discourage the Tenant from subletting or assigning the entire Unit?
- (2) Did the Landlords properly mitigate their rental income losses?
- B. Does the Tenant owe the Landlords a \$200.00 cleaning fee?

ANALYSIS

A. Does the Tenant owe rent to the Landlords?

(1) Did the Landlords inform the Tenant of her rights and obligations to sublet or assign the entire Unit? Did the Representative discourage the Tenant from subletting or assigning the entire Unit?

[11] The Landlords seek rent owing for April of 2024 because the Tenant occupied the Unit during this month but did not pay rent. The Tenant agreed that she did not pay the rent for this month and therefore I find that this part of the Landlords' rent owing claim is allowed.

[12] The Landlords were unable to re-rent the Unit after the Tenant moved out, from May to July, which was part of the remaining fixed term of the tenancy agreement. For the reasons below, this portion of the Landlords' rent owing claim is denied.

[13] Subsection 55(3) of the *Residential Tenancy Act* (or the "Act") provides the timeline for a tenant to end a fixed term tenancy by a notice of termination:

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.

[14] The message correspondence between the parties shows that on March 11, 2024 the Tenant advised the Representative that she planned on moving out before the end of the fixed term. The Tenant later indicated that she might continue staying in the Unit. On April 1, 2024 the Tenant further messaged the Representative advising that she had found a new place to move into as of May 1, 2024 and she would in fact be moving out of the Unit.

[15] The Tenant's message to the Representative on April 1, 2024 was notice to terminate the tenancy. However, this notice only ended the tenancy as of August 31, 2024 pursuant to subsection 55(3) of the *Act*. Therefore, the Tenant was at risk of having to pay rent for the Unit up to August 31, 2024.

[16] However, I find that the balance of the Landlords' rent owing claim is denied because:

(a) the Landlords did not inform the Tenant of her right to sublet or assign the entire Unit; and

(b) the Representative discouraged the Tenant from directly subletting or assigning the entire Unit.

[17] A tenant can reduce or eliminate their liability for rent by subletting or assigning a tenancy agreement.

[18] The *Residential Tenancy Act* required the Landlords to inform the Tenant of her rights and responsibilities regarding subletting and assigning the entire Unit.

[19] Since April 8, 2023 landlords on Prince Edward Island have been required to prepare written tenancy agreements. When residential rental issues arise, the first place landlords and tenants commonly check is the provisions of their written tenancy agreement (if one exists).

[20] Sections 10 and 11 of the *Act* set out the required content of tenancy agreements. In particular, clause 11(2)(a) of the *Act* states:

The landlord shall ensure that the tenancy agreement complies with the requirements of this Act and the regulations and includes

(a) the provisions set out in Division 4;

- [21] Landlords are required to include Part 2, Division 4 (sections 19 to 37) in all written tenancy agreements. These provisions inform tenants of the law regarding many aspects of a typical landlord-tenant relationship. The inclusion of these provisions in tenancy agreements helps prevent confusion regarding the proper processes that landlords and tenants need to follow.
- [22] Section 30 addresses rights, responsibilities and procedures for subletting and assigning tenancy agreements. A tenant has a right to sublet or assign their rental unit with the written consent of their landlord (subsection 30(1)). A landlord is prohibited from arbitrarily or unreasonably withholding consent (subsection 30(2)).
- [23] In this case the Landlords prepared a *Standard Form of Rental Agreement (Form 1)* dated August 10, 2023, which was a document prescribed under the *Rental of Residential Property Act*, the former legislation. By using an outdated tenancy agreement form, the Landlords did not fulfill their responsibility to inform the Tenant of her rights and responsibilities regarding subletting or assigning the Unit.
- [24] The *Residential Tenancy Act* has been in force since April 8, 2023 and the tenancy agreement between the Landlords and the Tenant was dated over four months later. The Landlords were required to use a tenancy agreement form that complied with the *Residential Tenancy Act*.
- [25] Based upon the evidence presented, I find that the Representative also discouraged the Tenant from directly finding replacement tenants.
- [26] The Tenant stated that on March 11, 2024 she had an oral conversation with the Representative. The Tenant stated that the Representative wanted to directly find replacement tenants for the Unit instead of the Tenant helping.
- [27] At the hearing the Representative did not dispute the Tenant's evidence that he advised the Tenant that he wanted to re-rent the Unit himself, without the Tenant's help.
- [28] Based upon the evidence presented, I find that the Representative interfered with the Tenant's right to mitigate her losses by subletting or assigning the tenancy agreement. I accept the Tenant's evidence that the Representative insisted on finding a replacement tenant without the Tenant's help.

(2) Did the Landlords properly mitigate their rental income losses?

- [29] The evidence presented does not establish that the Representative properly mitigated the Unit's rental losses. The Tenant and the Representative's testimony is contained in the hearing recording.
- [30] The Tenant provided evidence that the Representative did not properly consider the full range of potential applicants that could re-rent the Unit.
- [31] The Representative provided testimony that financial factors and ability to pay rent were what mattered for selecting applicants. However, the Representative also provided testimony that establishes that the Representative did not properly consider the full range of potential applicants for renting the Unit.
- [32] Therefore, I find that the Landlords did not properly mitigate their losses.

- [33] Further, I find that there is not enough evidence to support a three-month rent owing claim of \$6,300.00. The Representative stated that the Unit was advertised for free on Facebook and Kijiji. At the hearing the Representative stated that he did not know how many hours he spent trying to re-rent the Unit.
- [34] The Tenant stated that after she moved out of the Unit she and another person completed multiple rental searches but they did not find advertisements for the Unit.
- [35] 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 agreement with a landlord and the tenant moves out 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.
- [36] The Landlords have not provided enough evidence to establish that the Representative completed extensive mitigation efforts.
- [37] The Landlords' rent owing claim for the period of May to July of 2024 is also denied for these additional reasons.

B. Does the Tenant owe the Landlords a \$200.00 cleaning fee?

- [38] For the reasons below, I find that the Landlords have not established their \$200.00 cleaning fee claim.
- [39] Clause 39(2)(a) of the *Residential Tenancy Act* states:

When a tenant vacates a rental unit, the tenant shall

(a) leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear...

- [40] The Tenant was responsible to leave the Unit reasonably clean. The Tenant was not responsible to clean the Unit to a higher standard, such as move-in ready condition for the next tenant.
- [41] The Representative stated that the Unit had a strong cat and dog smell at the time the Tenant vacated. The Tenant did not meet with the Representative to complete a move-out inspection of the Unit. Around May 5 or 6, 2024 the Representative had a friend complete three or four hours of cleaning work at the Unit. The Representative stated that he paid his friend \$200.00 for this work.
- [42] The Tenant stated that she cleaned the Unit and mopped the floors. The Tenant's witness stated that she attended the Unit around April 28, 2024 when the Tenant moved out and the Unit was clean.
- [43] The parties have provided conflicting evidence regarding the condition of the Unit at the end of the tenancy agreement. The parties did not complete a written move-in or move-out inspection report, which is required by sections 18 and 38 of the *Act*. There was no objective evidence, such as photographs or videos, submitted to the Rental Office showing the condition of the Unit at the beginning and the end of the tenancy. The Representative's friend that cleaned the Unit did not participate in the teleconference hearing to provide their direct evidence.
- [44] I find that there is not enough evidence to support this cleaning fee claim.

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>

CONCLUSION

- [45] The Landlords will retain \$2,100.00 of the Tenant's security deposit for April 2024 rent. The Landlords' rent owing claim for May to July of 2024 and the cleaning fee claim are denied.
- [46] The Landlords will pay the Tenant the accumulated interest on the security deposit, in the amount of \$60.54, by the deadline below.
- [47] The Landlords must use a tenancy agreement form that complies with the *Residential Tenancy Act*. The Rental Office's *Standard Form of Tenancy Agreement (Form 1)* is available online in the Forms section of the Rental Office's website.

IT IS THEREFORE ORDERED THAT

1. The Landlords will retain \$2,100.00 of the Tenant's security deposit for April 2024 rent.
2. The Landlords will pay the Tenant the accumulated interest on the security deposit, in the amount of \$60.54, by November 29, 2024.

DATED at Charlottetown, Prince Edward Island, this 8th day of November, 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.