

INTRODUCTION

[1] The Landlord wants to keep the Tenants' security deposit for lost rental income.

DISPOSITION

- [2] I find that the Landlord's lost rental income claim is denied because the Landlord ended the tenancy without a reason permitted by the *Residential Tenancy Act* (or the "Act"). I find that the tenancy agreement is terminated effective September 14, 2024, the date the Tenants moved out of the Unit.
- [3] The Landlord must pay the Tenants the security deposit (\$2,500.00) plus accumulated interest (\$113.91), in the total amount of \$2,613.91.

BACKGROUND

- [4] The Unit is a two-bedroom, two-bathroom apartment located in a 24-unit building.
- [5] The Landlord and the Tenants entered into a written, fixed-term tenancy agreement for the period of August 15, 2021 to August 15, 2023. On or about June 16, 2023 the fixed term was extended to February 15, 2025. Near the beginning of the tenancy the Tenants paid the Landlord a \$2,500.00 security deposit. Rent in the amount of \$2,500.00 was due on the fifteenth day of the month.
- [6] The Tenants moved out of the Unit on September 14, 2024.
- [7] On September 27, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") under the *Residential Tenancy Act* (or the "Act"). In the Application the Landlord seeks to retain the Tenants' security deposit.
- [8] On October 24, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for November 12, 2024, along with a copy of the Application.
- [9] On November 8, 2024 the Rental Office emailed the parties a 15-page evidence package (the "Evidence Package").
- [10] On November 12, 2024 the Landlord participated in a teleconference hearing. The Tenants did not join the teleconference. I called the Tenants' telephone number but it was out of service. I emailed the Tenants to advise that the hearing would be proceeding shortly. Ten minutes after the scheduled time the hearing proceeded in the absence of the Tenants. The Landlord confirmed that all the documents he submitted to the Rental Office were included in the Evidence Package. The Landlord submitted an additional document into evidence after the hearing.

ISSUE

- A. Can the Landlord keep the Tenants' security deposit for lost rental income?

ANALYSIS

- [11] The Landlord stated that he has not received any rent for the Unit since September 15, 2024 and the parties had a fixed-term tenancy agreement until February 15, 2025.
- [12] The Landlord wrote in the particulars of the Application the following: "*To apply the \$2500.00 deposit on the liquidated damages of broken lease (Form 1).*" At the hearing the Landlord explained that he wanted the Tenants to pay for all of the Unit's lost rental income, not just the security deposit amount.

- [13] I note that, if the Landlord wanted to claim a rent amount above the security deposit, then the Landlord should have clearly indicated this on the Application. The Landlord could have selected item (f) on the Application regarding compensation exceeding the security deposit but this item was left blank.
- [14] On June 28, 2024 the Landlord's spouse emailed the Tenants advising that the tenancy agreement would not be renewed. At the hearing the Landlord explained that the Tenants had to move out on February 15, 2025 because the Landlord wanted the Unit for his sister, who is moving home from New Zealand.
- [15] I note that a tenancy agreement can only be ended in accordance with the *Residential Tenancy Act* (subsection 51(1)).
- [16] A tenant can end a tenancy agreement at the end of a fixed-term without reason by informing their landlord in advance. Subsection 55(3) states:
- 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.*
- [17] There is no similar provision in the *Act* for a landlord to end a tenancy agreement without reason by informing their tenant in advance.
- [18] Instead, by operation of law, a fixed-term tenancy agreement without an option to renew converts to a month-to-month tenancy agreement (subsection 52(1)). There are other limited circumstances where a tenancy automatically ends on the last day of the fixed-term (subsection 52(2)). I find that none of the exemptions apply in this case.
- [19] The Landlord stated that he did not offer to extend the tenancy agreement past February 15, 2025. Therefore, the Tenants did not have an option to renew (subsection 52(1)).
- [20] A landlord and a tenant can enter a written agreement to end a tenancy agreement but the agreement cannot be part of the tenancy agreement (subsections 51(3) and 52(2)). In this case the parties did not enter into a separate agreement to end the tenancy.
- [21] The evidence presented does not support any of the remaining exceptions.
- [22] If a landlord wants to end a tenancy agreement for occupation of a rental unit by an eligible family member, then the landlord needs to serve a *Form 4 (B) Eviction Notice* under section 62 of the *Act* and provide at least four full months' notice.
- [23] I note that a landlord's sibling is not an eligible family member for ending a tenancy under section 62. I also note that, in circumstances where a landlord has an eligible family member moving into a rental unit under a *Form 4 (B) Eviction Notice*, the tenant has the right to end the tenancy early by giving their landlord at least ten days' written notice (section 69).
- [24] In this case the Landlord advised the Tenants on June 28, 2024 that the tenancy would end on February 15, 2025 without having a valid basis. By operation of law, the fixed-term would have converted to a month-to-month agreement. The Landlord's sister was not an eligible family member for ending the tenancy agreement under section 62.

- [25] On August 13, 2024 the Tenants emailed the Landlord advising that they had given a deposit for a new place and were closing on September 13. The Tenants moved out of the Unit on September 14, 2024. The Tenants' email on August 13, 2024 was sent 32 days before the Tenants moved out.
- [26] The Landlord cannot claim more rent owing than a landlord who in fact: (1) had a valid reason for ending a tenancy agreement; and (2) served the proper eviction notice form (*Form 4 (B) Eviction Notice*). In the circumstances of this case I find that it is appropriate to terminate the tenancy as of September 14, 2024, the date the Tenants moved out, which is authorized by clauses 85(1)(n) and (o) of the *Act*.
- [27] Therefore, the Landlord's rent owing claim after September 14, 2024 is denied. The Landlord must pay the Tenants the security deposit plus interest by the timeline below.
- [28] The Landlord stated that he is attempting to re-rent the Unit at a \$2,600.00 monthly rent because the rent has not been increased for eight years. I note that, without an order approving the increase, this rent would be an unlawful 4.0% increase from the \$2,500.00 rent, which is prohibited by the *Residential Tenancy Act*.
- [29] I also note that the maximum guideline increase set by the Director of Residential Tenancy is 3.0% for 2024 and 2.3% for 2025. If the Landlord wants to increase the rent above the guideline percentage, then the Landlord must first file an application with the Rental Office, participate in a rent increase hearing and obtain an order approving the above guideline increase.

IT IS THEREFORE ORDERED THAT

1. The tenancy agreement between the Landlord and the Tenants is terminated effective September 14, 2024. The Tenants do not owe rent to the Landlord.
2. The Landlord must pay the Tenants the security deposit plus interest, in the amount of \$2,613.91, by December 4, 2024.

DATED at Charlottetown, Prince Edward Island, this 14th 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.