

INTRODUCTION

- [1] The Tenants applied for compensation from the Landlord for double the security deposit plus interest in the amount of \$1,203.58.
- [2] The Landlord applied for compensation exceeding the security deposit for rental arrears in the amount of \$300.00.

DISPOSITION

- [3] I find that the Landlord must return the security deposit plus interest to the Tenants.
- [4] Further, I find that the Tenants do not owe rental arrears to the Landlord.

BACKGROUND

- [5] The Unit is a room in a three-bedroom and two-bathroom single family dwelling (the "Residential Property") owned by the Landlord since December of 2023.
- [6] On September 24, 2024 the parties entered into an oral month-to-month tenancy agreement to start October 1, 2024. The Tenants paid a \$600.00 security deposit. Rent was \$900.00 (\$450.00 each) due on the first day of the month.
- [7] On September 30, 2024 the Tenants informed the Landlord that they would not be moving into the Unit because the Residential Property's condition.
- [8] On October 17, 2024 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Tenants' Application") with the Residential Tenancy Office (the "Rental Office") seeking compensation for double the \$600.00 security deposit, plus interest.
- [9] On November 8, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for December 3, 2024, along with a copy of the Tenants' Application.
- [10] On November 28, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Landlord's Application") with the Rental Office seeking compensation exceeding the security deposit from the Tenants for rental arrears in the amount of \$300.00. The Landlord's Application was emailed to the Tenants.
- [11] On November 29, 2024 the Rental Office emailed the parties a 43-page PDF document (the "Evidence Package" or "EP").
- [12] On December 3, 2024 the Tenants, the Landlord and a witness for the Landlord participated in a teleconference hearing. The parties confirmed receipt of the Evidence Package and the parties also confirmed that all documents submitted to the Rental Office were included in the Evidence Package.

ISSUES

- i. Must the Landlord compensate the Tenants double the security deposit plus interest?
- ii. Must the Tenants compensate the Landlord for rental arrears?

ANALYSIS

- [13] The Tenants stated that on September 24, 2024 they did a walkthrough of the Residential Property with another tenant. The Landlord requested the security deposit and they e-transferred \$600.00 to the Landlord. The Tenants stated that they noticed the Residential Property was not up to the cleanliness standard they expected. The Tenants stated that they also had issues with another tenant in the Residential Property. The Tenants stated that the Residential Property was unclean and unsafe.
- [14] The Tenants stated that the Landlord did not give them a written tenancy agreement. The Tenants stated that they decided to not move into the Unit and on September 29, 2024 they informed the Landlord and requested their security deposit be returned.
- [15] The Landlord stated that the Tenants did a walkthrough with another tenant and knew the condition of the Residential Property at the time.
- [16] The Landlord stated that the Residential Property is safe. The other tenant that the Tenants have complained about was vacating on September 30, 2024.
- [17] The Landlord stated that she lost rent for October of 2024. She removed the advertisement and was unable to re-rent it due to the short notice. The Landlord stated that the Tenants were required to give one-months' notice. The Landlord wants to retain the \$600.00 security deposit and is requesting \$300.00 compensation to cover the \$900.00 rent for October of 2024.
- [18] I have reviewed the evidence and I find that the Landlord must return the security deposit plus interest to the Tenants, in the amount of \$603.58. I further find the Tenants do not owe rental arrears to the Landlord.
- [19] The reason for the denial of the Landlord's Application is that the parties did not enter into a written tenancy agreement as required under subsection 11(1) of the *Residential Tenancy Act* (or the "Act"), which states:

Tenancy agreement in writing

A landlord shall prepare a written tenancy agreement in respect of a tenancy that is entered into on or after the date this Act comes into force.

- [20] The facts of this case are similar to the facts in the Island Regulatory and Appeals Commission (the "Commission") Order LR24-47, which stated:

"Subsection 11(1) of the Residential Tenancy Act (the "Act") is mandatory and requires a landlord to prepare a written tenancy agreement in respect of a tenancy that is entered into on or after the Act came into force. The Commission notes that the Act came into force on April 8, 2023. The Commission finds that there was no written tenancy agreement between the parties. There were discussions, and some of these discussions were recorded in various text messages between the parties.

At the most, the parties had an agreement in principle. However, the Act requires a tenancy to have a written tenancy agreement for tenancies that start on or after April 8, 2023 and the onus to prepare such a written agreement rests on a landlord. Text messages suggesting the parties agreed on fundamental terms does not meet the requirements of the Act.

The Commission finds that there is no tenancy agreement between the parties and therefore the Landlord was required to return the \$800.00 paid by the Tenants."

- [21] Similarly, I find that the Landlord has not completed and has not provided the Tenants with a written tenancy agreement, required under subsection 11(1) of the Act. As such, I find that there is no tenancy agreement between the parties and therefore the Landlord must return the \$600.00 security deposit plus interest.
- [22] I find that the period for calculating interest commences on September 24, 2024 when the Tenants made the \$600.00 payment and concludes on the date the Order is issued.
- [23] As there is no tenancy agreement between the parties, I also find that subsection 40(4) of the Act is not triggered. This means that the Landlord does not have to pay double the security deposit to the Tenants. Therefore, the Tenants' Application is allowed in part.
- [24] Further, as there is no tenancy agreement between the parties, I also find that the Tenants do not owe the Landlord rental arrears for October of 2024. The Landlord's Application is denied.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenants \$603.58 by January 21, 2025.

DATED at Charlottetown, Prince Edward Island, this 30th day of December, 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.