

INTRODUCTION

- [1] The Tenants seek compensation in the amount of \$4,048.50 for an unlawful rent increase and overpayment of the security deposit.

DISPOSITION

- [2] I find that the Landlord must pay the Tenants \$4,048.50 for an unlawful rent increase and overpayment of the security deposit.
- [3] The lawful rent for the Unit is set at \$2,790.00.

BACKGROUND

- [4] The parties entered into a written, fixed-term tenancy agreement for the Unit for the period of September 1, 2023 to August 31, 2024 which converted to a month-to-month tenancy. A security deposit of \$2,990.00 was paid on August 13, 2023. Rent of \$3,079.70 is due on the first day of the month.
- [5] On December 11, 2024 the Landlord served the Tenants with a *Form 4(A) Eviction Notice* with an effective date of December 31, 2024 (the "Notice") for non-payment of rent of December 2024 rent and repeatedly late paying rent.
- [6] On December 20, 2024 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* with the Residential Tenancy Office (the "Rental Office") disputing the Notice. That application is the subject of Order LD25-019.
- [7] On December 23, 2024 the Tenants filed another *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Rental Office seeking a return of rent due to an unlawful rent increase and overpayment of the security deposit.
- [8] On December 30, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 16, 2025.
- [9] On January 9, 2025 the Rental Office emailed the parties a 25-page PDF document (the "Evidence Package" or "EP"). The Landlord submitted additional evidence which included a one-page submission and a copy of the tenancy agreement (the "Additional Evidence").
- [10] On January 16, 2025 the Landlord and one of the Tenants (the "Tenant") joined the teleconference hearing for determination of the Applications. The Tenant was representing the Tenants at the hearing. The parties confirmed receipt of the Evidence Package and the Additional Evidence and that all documents submitted to the Rental Office were included.

ISSUE

- i. Must the Landlord compensate the Tenants for an unlawful rent increase and overpayment of the security deposit?

ANALYSIS

- [11] For the reasons below, I find that the Landlord must pay the Tenants \$4,048.50 for an unlawful rent increase and overpayment of the security deposit.
- [12] The Tenant stated that the former tenant's mail will sometimes arrive at the Unit and that he will message the former tenant. The Tenant stated that the former tenant lived in the Unit for the year prior to the Tenants moving into the Unit and that the former tenant paid \$2,790.00 rent.

- [13] The Tenant submitted a text message into evidence showing the former tenant stating that she paid \$2,790.00 a month in rent (EP18). The Tenant stated that the Landlord unlawfully increased the rent by \$200.00 a month and that he paid \$200.00 more for the security deposit.
- [14] The Tenant submitted calculations of the unlawful rent increase and overpayment of the security deposit into evidence (EP17). The Tenant stated that from September 1, 2023 to August 1, 2024 he paid \$2,990.00 in rent a month.
- [15] The Tenant stated that on July 21, 2024 the Landlord emailed the Tenants stating that starting September 1, 2024 the rent would increase by 3% for a total amount of \$3,079.70. The Tenant stated that from September 1, 2024 to January 1, 2025 he paid \$3,079.70 in rent a month.
- [16] The Tenant stated that at the beginning of the tenancy he paid \$2,990.00 for the security deposit.
- [17] The Landlord admitted that the name on the text message (EP17) was her former tenant who lived in the Unit from August 2022 to August 2023. The Landlord also admitted that the former tenant paid \$2,790.00 in rent monthly and that no services were changed from the former tenant's tenancy and the Tenants' tenancy.
- [18] The Landlord stated that she installed an electric water heater and a new house ventilation system. Numerous other renovations and upgrades were completed prior to the Tenants moving into the Unit. The Landlord stated that the rent was agreed upon by the parties and that the Unit's operating expenses have increased. The Landlord submitted a written submission on these points in the Additional Evidence.
- [19] I have reviewed the evidence and my findings are as follows:
- [20] Prince Edward Island is a rent controlled jurisdiction and this has not changed in the past thirty-five years. The Island Regulatory and Appeals Commission in Order LR19-15 summarized this province's rent control scheme as follows:

*"In Prince Edward Island, the Rental of Residential Property Act ... provides for a system of rent control whereby rent runs with the residential unit. When a lessee surrenders possession of that unit to the lessor, that rate of rent still remains fixed to that unit. This rent applies to a subsequent lessee even if the unit has been vacant between the tenancies. **Any agreement as to the amount of rent reached between lessor and lessee is null and void to the extent that it runs contrary to the rent control provisions of the Act.***

To balance out the rigours of rent control, Part IV of the Act sets out the process whereby rent increases may lawfully be made. If a lessor raises the rent of a unit without first following the process set out in Part IV of the Act, such an increase is illegal.

As there is no evidence that this rental increase was approved under Part IV of the Act, the Commission finds that the Appellant illegally increased the rent of 39 Rankin Court from \$800.00 per month to \$1500.00.

*Both the Appellant and Mr. Wang pleaded lack of knowledge as to the quantum of the previous rent and lack of familiarity as to the requirements of the Act. Mr. Wang's testimony appeared to deflect blame to others. **Lack of familiarity of the Act does not in any way mitigate the requirements of the Act.**" [emphasis added]*

- [21] Subsections 47(1) and (2) of the *Residential Tenancy Act* (or the "Act") state:

A landlord shall not increase rent except in accordance with this Part.

The obligations of a landlord under this Part run with the rental unit and not the tenant.

- [22] I find that the Landlord did not comply with the rent control scheme under the Act. The lawful rent for the Unit was \$2,790.00; yet the Landlord increased the rent by \$200.00 without approval from the Rental Office for an additional rent increase under subsection 50(1) of the Act. Therefore, I find that the Tenants are entitled to recover the unlawful increase under subsection 50(8) of the Act.
- [23] Further, I find that the Tenants are entitled to a return of the overpayment of the security deposit under subsection 14(4) of the Act.
- [24] I note that on September 1, 2024 the Landlord increased the rent by the 3% annual allowable guideline for 2024. However, I find that the Landlord did not give the Tenants the required three months' notice under clause 48(2)(b) of the Act and did not give the Tenants the required approved form (*Form 8 Tenant Notice of Annual Allowable Rent Increase*) under subsection 48(4) of the Act.
- [25] As a result, I find that the Landlord was not permitted to increase the rent by the annual allowable guideline for 2024 on September 1, 2024. The Landlord must return the overpayment from September 1, 2024 to January 1, 2025 based off the lawful rent of \$2,790.00.
- [26] The Application is allowed and the Landlord must pay the Tenants \$4,048.50 by the timeline below, calculated as follows:

Time Period	Amount Paid	Lawful Amount	Amount Owed
SEP-1-23 to AUG-31-24 (12 months)	\$2,990.00 / month (\$200.00 unlawful)	\$2,790.00 / month	\$2,400.00 (\$200 x 12)
SEP-1-24 to JAN-1-25 (5 months)	\$3,079.70 / month (\$289.70 unlawful)	\$2,790.00 / month	\$1,448.50 (\$289.70 x 5)
<u>Security Deposit</u>	<u>\$2,990.00</u>	<u>\$2,790.00</u>	<u>\$200.00</u>
Total Amount Owed			\$4,048.50

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenants \$4,048.50 by March 17, 2025.
2. Rent for the Unit is set at \$2,790.00 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 17th day of January, 2025.

(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.