

INTRODUCTION

- [1] The Subtenants (AS, AM, and MW) seek to end their subletting agreements with the Tenant effective October 1, 2024 based upon claims of an unsafe and dangerous living environment. Two of the Subtenants (AS and MW) made claims against the Tenant for damage to personal property.
- [2] The Tenant seeks to retain the Subtenants' security deposits. The Tenant also seeks additional compensation from AS and MW. The Tenant's claims are based upon damage to the Units and unpaid October 2024 rent.

DISPOSITION

- [3] The Subtenants' claim for early termination of the subletting agreements and the property damage claims are denied.
- [4] The Tenant's damage claims are denied and the October 2024 rent claims are allowed in part. The Tenant will retain AS and MW's entire security deposits and retain part of AM's security deposit. AM's security deposit balance will be returned to AM.

BACKGROUND

- [5] This case involves the Tenant subletting three upstairs bedrooms of a four-bedroom, three-bathroom unit (the "Residential Property") to the Subtenants.
- [6] The Tenant lives in the fourth bedroom in the downstairs of the Residential Property. The building also has a basement unit which was not rented by the Tenant or the Subtenants and is not considered part of the Residential Property in this decision.
- [7] The Tenant and the owner of the Residential Property (the "Owner") entered into a written, fixed-term tenancy agreement for the period of May 1, 2023 to May 1, 2026 (the "Primary Agreement"). Rent in the amount of \$2,600.00 is due each month from the Tenant.
- [8] The Subtenants rented three separate rooms with shared services and facilities (the "Units") under three separate agreements (the "Subletting Agreements").
- [9] The Tenant and AS entered into a written subletting agreement which provides a fixed-term from July 1, 2024 to July 31, 2025. A security deposit of \$1,000.00 was paid on June 18, 2024. AS moved into her unit on July 20, 2024. Rent in the amount of \$1,000.00 plus \$20.00 for Wi-Fi internet was due on the first day of the month.
- [10] The Tenant and MW entered into a written subletting agreement which provides a fixed-term from June 1, 2024 to July 1, 2025. A security deposit of \$800.00 was paid on May 27, 2024. MW received keys from the Tenant on August 14, 2024 and began living in her unit on August 19, 2024. Rent in the amount of \$800.00 plus \$20.00 for Wi-Fi internet was due on the first day of the month.
- [11] The Tenant and AM entered into a written subletting agreement which provides a fixed-term from July 1, 2024 to July 31, 2025. A security deposit of \$800.00 was paid on May 31, 2024. AM moved into her unit on August 28, 2024. Rent in the amount of \$800.00 plus \$20.00 for Wi-Fi internet was due on the first day of the month.
- [12] Each of the Subtenants also entered into separate roommate agreements with the Tenant (the "Roommate Agreements").

- [13] On September 23, 2024 the Subtenants filed three *Form 2(A) Tenant Applications to Determine Dispute* (the “Termination Applications”) with the Residential Tenancy Office (the “Rental Office”) seeking to end the Subletting Agreements effective October 1, 2024 due to unsafe and dangerous living conditions.
- [14] On September 30, 2024 the Subtenants moved out of the Residential Property.
- [15] On October 3, 2024 the Tenant filed three *Form 2(B) Landlord Applications to Determine Dispute* (the “Security Deposit Applications”) with the Rental Office seeking to retain the Subtenants’ security deposits for October 2024 rent. The Tenant also claimed against AS and MW for additional compensation regarding damage to their units.
- [16] On October 7, 2024 AS and MW filed two additional *Form 2(A) Tenant Applications to Determine Dispute* (the “Property Applications”) with the Rental Office seeking compensation from the Tenant for damage to personal property caused by the Tenant’s dog (the “Dalmatian”).
- [17] On October 11, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for November 19, 2024, along with a copy of the Termination Applications, the Security Deposit Applications and the Property Applications.
- [18] On November 15, 2024 the Rental Office provided the parties with a 225-page PDF document, video and audio recordings (the “Evidence Package”) via TitanFile.
- [19] On November 18, 2024 the Tenant submitted to the Rental Office two additional pages of evidence, which were provided to the Subtenants.
- [20] On November 19, 2024 the Tenant, the Subtenants, and SS (AS’s witness) participated in a teleconference hearing. The parties confirmed receipt of the Evidence Package and the additional evidence and the parties also confirmed that all of the documents submitted to the Rental Office were included. After the hearing SS provided the Rental Office with a copy of her speaking notes from the hearing, which were forwarded to the other parties.

ISSUES

- A. Does the evidence presented support termination of the Subletting Agreements effective October 1, 2024? Is the Tenant responsible for damage to the Subtenants’ personal property?
- B. Can the Tenant retain the Subtenants’ security deposits for damage and unpaid October 2024 rent?

ANALYSIS

- A. **Does the evidence presented support termination of the Subletting Agreements effective October 1, 2024? Is the Tenant responsible for damage to the Subtenants’ personal property?**
- [21] I find that the Subtenants’ Termination Applications and Property Applications are denied. The behaviour and damage complained of by the Subtenants mainly occurs in the parties’ roles as roommates and not in the context of a landlord-tenant subletting dispute. I also find that there is insufficient evidence to support termination of the Subletting Agreements.

Roommate-Roommate Complaints

- [22] In some cases, a tenant sublets an entire rental unit for a period of time and does not live in the unit with the subtenants. The tenant acts in a single role like a landlord and the subtenants act in a single role like tenants.

- [23] In cases where a tenant lives in a rental unit with subtenants, the tenant and the subtenants have two roles. The tenant acts like a landlord and also as a roommate and the subtenants act like tenants and roommates.
- [24] The Rental Office's jurisdiction is limited to determining the disputes between the Tenant and the Subtenants in their roles like landlord and tenants. The Rental Office does not have jurisdiction to determine roommate-roommate disputes.
- [25] The documents signed by the parties reflect these two roles. The Tenant and the Subtenants signed two sets of documents, being the Subletting Agreements and the Roommate Agreements.
- [26] Upon review of these documents it appears that the wording of the Roommate Agreements' template is more suited for a situation where all of the roommates sign a single roommate agreement and the roommates are all tenants of the property owner under a single tenancy agreement.
- [27] In this case, the Tenant signed separate roommate agreements with each of the Subtenants and the Primary Agreement is solely between the Tenant and the Owner.
- [28] However, the Roommate Agreements address some matters which are roommate-roommate in nature. In particular, clauses 14 (House Rules), 18 (Use of Personal Property) and 21 (Pets) state:

House Rules

All Roommates agree to act reasonably in their dealings with each other and to refrain from any behaviour, action or inaction that they know, or reasonably ought to know, will interfere with the other Roommates' quiet enjoyment. All Roommates agree to discuss concerns frankly and in a timely manner, and to refrain from emotional outbursts. Should negotiation become necessary, all Roommates agree to negotiate in good faith. All Roommates agree to respect each other's property, privacy and sleep schedules and to comply with all reasonable requests whenever possible.

Use of Personal Property

Property deemed personal in nature includes the following: Any property purchased by each individual. All Roommates agree to refrain from borrowing the personal goods of any other Roommates, without prior approval. Exceptions to this should be clearly stated, with the Roommates reserving the right to change their minds about the sharing of their items. If damage is done to personal property, the Roommate responsible for the damage will be held liable.

Pets

Any pet owner also agrees that he or she will be exclusively responsible for any and all damage caused by the pet. This includes, but is not limited to, damage to furniture, carpeting, doors, lawn and garden.

- [29] Many of the Subtenants complaints against the Tenant are in the parties' roles as roommates.
- [30] The Subtenants provided evidence regarding damage to personal property in the Residential Property.
- [31] The Tenant stated that the Subtenants only made the Tenant aware of limited damage to personal property and then later claimed for extensive personal property damage in the Property Applications.

- [32] I note that damage to personal property caused by pets is specifically addressed in the clauses of the Roommate Agreements quoted above. The property damage claimed by the Subtenants is in the context of a roommate-roommate dispute. Therefore, this claimed damage does not support termination of the Subletting Agreements.
- [33] Further, I do not have jurisdiction (authority) to determine the property damage monetary claims that are based upon roommate-roommate disputes. As a result, the Property Applications are denied.
- [34] The Subtenants also complained of the Tenant's alcohol consumption, theft of personal belongings, blocking vehicles, dumping wet laundry onto a bed in a bedroom without permission, peanut butter usage, and other matters.
- [35] I find that these complaints are also roommate-roommate disputes that do not support termination of the Subletting Agreements. I also note that the Tenant denied part of the complaints and provided context regarding the remaining complaints.
- [36] The Tenant denied having any substance abuse issues, denied stealing any of the Subtenants' property and denied deliberately blocking the Subtenants' vehicles.
- [37] The Tenant stated that on one occasion the Tenant dried AM's clothes and put the clothes in AM's room while AM was away from the Residential Property. The Tenant stated that she did this work at AM's request. The movement of AM's laundry allowed for the machines to be available to others.
- [38] The Tenant stated that she asked AM if peanut butter in the Residential Property was a problem and AM responded that it was not a problem unless AM touched and ingested it. Based upon this conversation, the Tenant did not believe that her peanut butter usage posed a threat to AM.
- [39] The Tenant also provided evidence regarding roommate complaints against the Subtenants.
- [40] Based upon the evidence presented, I expect that the parties would not have entered into the Subletting Agreements and the Roommate Agreements had they known one another and their pets better beforehand. However, the complaints against the Tenant in her role as a roommate are not a valid basis for ending the Subletting Agreements.

Claims Regarding Aggressive Dog

- [41] For the reasons below, I find that the evidence presented does not establish that the Dalmatian engaged in aggressive or atypical behaviour that supports termination of the Subletting Agreements. I also find that many of the Subtenants' issues with the Dalmatian are roommate-roommate disputes.
- [42] The Subtenants argue that the Dalmatian made the Residential Property unsafe for the Subtenants and their pets. AM was bitten by the Dalmatian when AM attempted to throw out part of a bagel. AS was bitten by the Dalmatian while attempting to retrieve a silicone utensil. The Dalmatian stole food, made messes in the Residential Property, and limited the Subtenants' use of the common area.
- [43] The Subtenants stated that the Tenant has mentioned that the Dalmatian was problematic, needed to be neutered and was retired from his conformation career. The Subtenants also stated that they were told by the Tenant that the Dalmatian was poorly behaved on walks and very bad with other dogs.
- [44] The Subtenants submitted into evidence short videos of the Dalmatian in the Residential Property.

- [45] The Tenant denies that the Dalmatian is an aggressive dog and argued that the Subtenants are attempting to use the Dalmatian as an excuse for “backing out” of the Subletting Agreements. The Tenant stated that the parties made an agreement regarding the Dalmatian’s use of the common area.
- [46] The Tenant stated that the Dalmatian was purposively bred for a good temperament by a reputable breeder. The Tenant stated that the Dalmatian is a volunteer teaching dog consistently handled by students and clinicians. The Tenant stated that the Dalmatian is a show dog that has not exhibited aggressive behaviour towards other animals. The Tenant stated that she only had the Dalmatian neutered because she did not intend on breeding him.
- [47] The Tenant stated that she was bitten by one of the Subtenants’ dogs and the Tenant’s cat was bitten by another dog belonging to one of the Subtenants.
- [48] The Tenant stated that on September 2, 2024 the Tenant and the Subtenants had a house meeting. The Subtenants requested that the Dalmatian stay in the Tenant’s room while the Tenant was not present. The Tenant apologized for the Dalmatian’s behaviour taking food and the Tenant agreed to the Subtenants’ request.
- [49] The Tenant stated that AS later requested that the Dalmatian be confined to the Tenant’s room at all times. The Tenant was not agreeable to this request. The parties agreed to use baby gates to address the movement of the dogs. The Tenant stated that the Subtenants did not always close the baby gate by the stairs and the Dalmatian sometimes went upstairs.
- [50] On September 5, 2024 the Tenant spoke with AS and asked if anything was wrong. AS told the Tenant that nothing was wrong and she stated that she was stressed about school. The Tenant asked AS that if there were any further issues to speak with the Tenant right away to have them addressed. The Tenant stated that there was limited or no further oral or written communication from the Subtenants regarding problems at the Residential Property until the Subtenants requested to end the Subletting Agreements.
- [51] The Tenant provided two letters from the Atlantic Veterinary College Veterinary Teaching Hospital (the “Hospital”) regarding the Dalmatian dated October 12, 2024 and November 17, 2024. The Hospital’s second letter reviewed videos submitted into evidence by the Subtenants and concluded in part as follows:
- “...Any dog who has had exposure to being offered human food or being fed at the table would be at risk of exhibiting the same behaviour – pursuing the food when encouraged – as was the case here. No aggression or antecedents of any aggressive or agonistic behaviours were shown by [the Dalmatian] at any time.”*
- [52] The Subtenants argue that the Tenant could have edited or fabricated the videos to help the Tenant’s case. The Subtenants do not know what happened because they were not part of the process.
- [53] I note that the Hospital summarized the Subtenants’ videos in the November 17, 2024 letter. The descriptions in the letter are consistent with the content of the Subtenants’ videos and therefore the Subtenants’ alteration argument is not supported.
- [54] The Subtenants also argued that the Tenant should not have shared the Subtenants’ videos with the Hospital.

- [55] I note that subsection 75(3) of the *Residential Tenancy Act* (or the “Act”) states:

The landlord, tenant or representative referred to in subsection (1) shall supply any information requested by the Director for the purpose of determining the matter in dispute, and all information provided to the Director shall be available to both parties, who shall preserve confidentiality with respect to it.

- [56] It appears to me that the Tenant provided videos to the Hospital for the purpose of obtaining opinion evidence regarding a matter that is in dispute before the Rental Office raised by the Subtenants’ evidence. The Tenant providing the Subtenants’ videos to the Hospital for an opinion in this context does not breach the confidentiality requirement in subsection 75(3).

- [57] I have reviewed the evidence of the parties and I am not satisfied that the Dalmatian’s behaviour that supports termination of the Subletting Agreements. The Hospital’s November 17, 2024 letter disputes that the Dalmatian was aggressive or engaged in atypical dog behaviour in the videos submitted into evidence by the Subtenants. I also note that these videos are very short recordings and I am not satisfied that the videos provide the full context regarding the Dalmatian’s behaviour.

- [58] I note that there were no inspection documents from the Department of Environmental Health in evidence. The Subtenants could have sought an investigation by Environmental Health by following the procedure set out in section 12 of the *Public Health Act Rental Accommodation Regulations*, which states:

No pet, dog, bird or animal shall be kept in any dwelling so as to become a nuisance to other occupants of the dwelling, provided that any alleged violation of this section shall only be investigated by a public health official following a written complaint signed by two or more occupants of the dwelling.

- [59] It does not appear that the Subtenants followed this procedure and such an inspection report is not in evidence.

- [60] I am also not satisfied that the Subtenants sufficiently made the Tenant aware of their complaints against the Dalmatian before seeking to end the Subletting Agreements. There is limited written documentary evidence from the Subtenants to the Tenant outlining their complaints against the Dalmatian and the proposed solutions. It appears that most of the communication was word-of-mouth and the Tenant was surprised on September 19, 2024 when the Subtenants asked to end the Subletting Agreements.

- [61] I also find that many of the Subtenants’ complaints against the Dalmatian are roommate-roommate dispute. In particular, the damage to personal property complaints against the Dalmatian are specifically addressed in the Roommate Agreements, as determined above.

- [62] The Subtenants have the burden of proof to establish that the Subletting Agreements should be ended as of October 1, 2024. I find that there is insufficient evidence to support the Subtenants’ claim regarding the Dalmatian.

Subletting Agreement Complaints

- [63] The Subtenants provided some further complaints that may engage the Subletting Agreements’ landlord-tenant relationship.
- [64] The Subtenants stated that the Tenant withheld a mail key and interfered with Wi-Fi internet access. The Subtenants provided complaints regarding the condition of the Residential Property which included a missing fridge handle, a heat pump not working and a stinging nettle bush.

- [65] The Tenant denied withholding a mail key and interfering with Wi-Fi internet access.
- [66] The Tenant stated that the fridge did not have a handle at the time the Tenant originally moved into the Residential Property. The Tenant stated that she passed on the Subtenants' maintenance requests to the Owner's property manager. However, some requests took time for approval and completion and other requests were denied. In particular, the request to remove a stinging nettle bush was denied.
- [67] I find that there is insufficient evidence regarding these matter to terminate the Subletting Agreements as of October 1, 2024.
- [68] For these reasons, the Subletting Agreements are not terminated effective October 1, 2024. The Subtenants remained responsible for October 2024 rent in the amounts determined below.

B. Can the Tenant retain the Subtenants' security deposits for damage and unpaid October 2024 rent?

Damage

- [69] The Tenant claims against AS in the amount of \$1,000.00 for wall damage in AS's bedroom. The Tenant submitted into evidence an image taken on June 12, 2024 showing the state of the wall at that time. The Tenant does not believe that the wall was damaged between June 12, 2024 and the date the Tenant moved into the Unit. The Tenant did not witness AS damage the wall, however, the Tenant argues that AS may have damaged the wall while moving in or out of the unit. The Tenant was unable to fix the damage herself.
- [70] AS denied causing damage to the bedroom walls. AS questioned the date on which the wall damage before photograph was taken. AS argues that, even if the photograph was taken on June 12, 2024, this would be over one month before AS moved in.
- [71] The Tenant claims against MW in the amount of \$1,000.00 for damage to the windowsill in MW's bedroom. The Tenant disputes MW's evidence that the damage existed before MW moved in.
- [72] MW's evidence is that there was pre-existing windowsill damage at the time she moved in. MW stated that on August 15, 2024 she took photographs showing damage to the unit which included teeth marks on the windowsill and damage to the baseboard. MW denied damaging the windowsill. MW stated that she was told by the Tenant that a previous subtenant's dog had caused the damage.
- [73] The parties did not complete written move-in inspection reports.
- [74] On September 23, 2024 the Tenant emailed the Subtenants regarding move-out inspections on September 30, 2024. The Subtenants did not participate in the move-out inspections and the Tenant prepared reports for each of the Subtenants dated October 2, 2024.
- [75] The Subtenants also dispute the damage amounts claimed by the Tenant.
- [76] I find that the Tenant's damage claims are denied. There is insufficient evidence regarding the baseline condition of the Units at the time the Subtenants moved in for an accurate assessment of any damage. The Subtenants' evidence puts into question whether the damage claimed was pre-existing.
- [77] I am also not satisfied that the Subtenants caused the damage. The evidence presented does not disclose specific incidents involving the Subtenants or their pets where the damage occurred.

Rent Owing

[78] The Tenant seeks rent owing for October 2024 against the three Subtenants for the following amounts:

- \$1,000.00 for AS
- \$800.00 for AM
- \$800.00 for MW

[79] The Tenant pays the Owner a monthly rent of \$2,600.00. All services are included in the Primary Agreement's rent except for Wi-Fi internet, which is an additional service split up between the parties. The Tenant also provided furniture in the common area of the Residential Property.

[80] The Tenant re-rented AM's room to one occupant starting October 15, 2024 for \$650.00 per month plus \$25.00 for Wi-Fi internet. Starting December 1, 2024 two occupants rented this room for \$800.00 per month plus \$25.00 each (\$50.00) for Wi-Fi internet.

[81] The Tenant re-rented MW's room effective November 1, 2024 for \$700.00 plus \$25.00 for Wi-Fi internet.

[82] The Tenant re-rented AS's room effective December 1, 2024 for \$1,000.00 per month plus \$25.00 for Wi-Fi internet.

[83] Subsection 30(6) of the Act states:

Where a tenant has sublet a rental unit to another person

(a) the tenant remains entitled to the benefits and is liable to the landlord for the breaches of the tenant's obligations under the tenancy agreement or this Act during the subtenancy; and

(b) the subtenant is entitled to the benefits and is liable to the tenant for the breaches of the subtenant's obligations under the subletting agreement or this Act during the subtenancy.

[84] Subsection 30(8) addresses rent charged by a tenant to a subtenant, stating as follows:

A tenant

(a) shall not charge a subtenant more rent than is payable under the tenancy agreement; and

(b) where the tenant and the subtenant occupy the rental unit, shall not charge the subtenant more rent than the amount represented by the rent payable under the tenancy agreement, either

- (i) divided by the number of tenants during the subtenancy, or*
(ii) apportioned among the tenants in a manner agreed to by them.

[85] I note that the Tenant did not charge the Subtenants more rent than the Primary Agreement.

[86] Further, in Order LR24-72 the Island Regulatory and Appeals Commission (the "Commission") found that in certain circumstances a tenant could charge a subtenant higher rent than the tenant paid under their tenancy agreement with the owner. In this case the Commission found that the tenant provided the subtenants with additional services and facilities, including furnishings, compared to the tenant's tenancy agreement with the owner. The Commission ordered the subtenants to pay rent to the tenant.

- [87] I note that the Tenant furnished the common area of the Residential Property, which was in addition to the Primary Agreement's services and facilities.
- [88] Further, clause 30(8)(b) does not require a tenant to divide the tenancy agreement's rent equally amongst all the occupants. This is only an option under clause 30(8)(b)(i). A tenant can also apportion the tenancy agreement rent in a manner agreed to by the tenant and the subtenants.
- [89] In this case the Tenant entered written agreements with the Subtenants in which they agreed to a specific monthly rent which together totaled \$2,600.00. It appears that this apportionment of the Primary Agreement's rent is authorized by clause 30(8)(b)(ii).
- [90] Although there are information disclosure requirements in section 11 the *Act*, these requirements only apply to a "landlord." In Order LR24-72 the Commission reviewed the definition of "landlord" in the *Act*. The Commission observed that a tenant who sublets and also occupies a rental unit is not a "landlord" within the meaning of the *Act*.
- [91] Therefore, the Tenant is not subject to the section 11 information disclosure requirements.
- [92] I note that there were periods at the Residential Property before the Subletting Agreements began where the Tenant did not have subtenants. The Tenant would still be responsible for paying the entire \$2,600.00 rent to the Owner even though the Tenant received no subletting income.
- [93] Subsection 14(9) of the *Act* only requires a "landlord" to credit security deposit interest to a tenant. As the Tenant is not a "landlord," the Subtenants have not been credited with security deposit interest in this decision.
- [94] Further, the formula for calculating interest in section 3 of the *Residential Tenancy Regulations* would not be applicable.
- [95] The agreements between the parties also do not obligate the Tenant to credit security deposit interest to the Subtenants.
- [96] The Subtenants' Termination Applications were denied, above, and the Subtenants remain responsible for the October 2024 rent amounts claimed by the Tenant in the Security Deposit Applications.
- [97] However, the Tenant was able to re-rent AM's unit as of October 15, 2024. AM is only responsible for pro-rated October 2024 rent up to the date her unit was re-rented, in the amount of \$361.29 (14 days divided by 31 days multiplied by \$800.00), which the Tenant will retain from AM's security deposit. The Tenant will return AM's \$438.71 security deposit balance to AM.
- [98] The Tenant did not find replacement subtenants for AS or MW's units for October 2024.
- [99] I note that the Subtenants provided limited notice before moving out of the Units. I also note that the Tenant was attempting to re-rent three separate rooms at the same time. In these circumstances it is understandable that the Tenant was unable to re-rent AS and MW's units for October 2024. Therefore, the Tenant will retain AS and MW's entire security deposits for the October 2024 rent amounts claimed in the Security Deposit Applications.

CONCLUSION

- [100] The Subtenants' Termination Applications and Property Applications are denied.
- [101] The Tenant's Security Deposit Applications are allowed in part. The Tenant will retain \$361.29 of AM's security deposit, AS's entire \$1,000.00 security deposit and MW's entire \$800.00 security deposit for the Tenant's October 2024 rent claims.

[102] The Tenant will pay AM her \$438.71 security deposit balance by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Tenant will retain \$361.29 of AM's security deposit, AS's entire \$1,000.00 security deposit and MW's entire \$800.00 security deposit.
2. The Tenant will pay AM her \$438.71 security deposit balance by March 14, 2025.

DATED at Charlottetown, Prince Edward Island, this 14th day of February, 2025.

(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.