

INTRODUCTION

- [1] The Landlord claims against the Tenant for September 2024 rent, gasoline expenses and a Confederation Bridge toll.

DISPOSITION

- [2] I find that the Landlord has established a claim for September 2024 rent in the amount of \$750.00.
- [3] I find that the Landlord has established part of the claim for gasoline expenses and a Confederation Bridge toll related to re-renting the Unit, in the amount of \$118.96.

BACKGROUND

- [4] The Unit is a bedroom with shared facilities and services located in a building (the "Residential Property") that the Landlord has owned for four or five years.
- [5] The Landlord and the Tenant entered into a written, fixed-term tenancy agreement from September 1, 2024 to August 31, 2025. A security deposit of \$750.00 was paid on August 8, 2024. Rent in the amount of \$750.00 was due on the first day of the month.
- [6] On August 31, 2024 the Tenant messaged the Landlord stating that she would not be moving into the Unit.
- [7] The parties had an earlier Rental Office dispute regarding the security deposit, which was determined in Order LD24-362, issued on October 30, 2024. The Landlord was ordered to pay the Tenant double the security deposit plus interest, in the amount of \$1,503.83.
- [8] On November 7, 2024 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* with the Residential Tenancy Office (the "Rental Office") seeking rent owing for September 2024, gasoline expenses and a Confederation Bridge toll.
- [9] On November 15, 2024 the Landlord appealed Order LD24-362 to the Island Regulatory and Appeals Commission (the "Commission").
- [10] On January 10, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 21, 2025 along with a copy of the Application.
- [11] On January 20, 2025 the Rental Office emailed the parties a 55-page PDF (the "Evidence Package").
- [12] On January 21, 2025 the Landlord and the Tenant participated in a teleconference hearing. The parties confirmed receipt of the Evidence Package and confirmed that all documents submitted to the Rental Office for this matter were included. The parties submitted additional evidence during the hearing.

ISSUE

- A. Has the Landlord established valid claims against the Tenant for September 2024 rent, gasoline expenses and a Confederation Bridge toll?

ANALYSIS**September 2024 Rent****Tenant Notice August 31, 2024**

- [13] The Tenant stated that she lives in Ontario and there were personal circumstances that prevented her from moving into the Unit.
- [14] On August 31, 2024, the day before the tenancy was scheduled to commence, the Tenant text messaged the Landlord advising that she would not be moving into the Unit.
- [15] The Landlord did not receive rental income for the Unit during September 2024.
- [16] The procedure for ending a fixed-term tenancy by notice is stated in subsection 55(3) of the *Residential Tenancy Act* (of the "Act"):
- 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] The Tenant's August 31, 2024 notice only ended the tenancy as of August 31, 2025. Therefore, the Tenant's maximum responsibility for rent owing was \$9,000.00 (12 months multiplied by \$750.00).
- [18] The Landlord was required to mitigate (reduce) his losses.

Mitigation

- [19] Section 46 of the *Act* discusses mitigation, stating as follows:
- Where a tenant abandons the rental unit, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.*
- [20] The Landlord and the Tenant are also responsible for reducing losses at common law.
- [21] The Landlord stated that the Tenant did not provide enough time for the Landlord to be able to find a replacement tenant for September 2024. The Landlord found a new tenant on September 12, 2024 to move into the Unit on October 1, 2024.
- [22] The Landlord lives in Montreal and does not have a property manager on Prince Edward Island. After the Tenant notified the Landlord that she would not be moving in the Landlord advertised the Unit on Facebook Marketplace.
- [23] The Tenant referred to the Landlord a potential replacement tenant named Aneilla.
- [24] The Landlord stated that Aneilla was outside of Canada when she contacted the Landlord on September 3, 2024. The Landlord told Aneilla that two other people had viewed the Unit and wanted to sign a tenancy agreement and therefore Aneilla had almost no chance to rent the Unit.

- [25] The Landlord had arranged with other tenants of the Residential Property to provide access to these two people to view the Unit. However, the Landlord contacted the references for these two other people and received negative information. The Landlord decided not to rent to these two other people.
- [26] The Landlord continued to communicate with Aneilla and planned to show her the Unit. On September 6, 2024 the Landlord told Aneilla that he could show her the Unit after September 10, 2024, when the Landlord was arriving in Charlottetown. The Landlord followed up with Aneilla on September 10, 2024 to check if she had arrived. On September 16, 2024 Aneilla responded to the Landlord stating that she had arrived but she was not currently interested in looking at the Unit.
- [27] The Tenant argues that the Landlord did not adequately reduce his rental income losses.
- [28] For the reasons below, I find that the Landlord sufficiently mitigated his losses by finding a replacement tenant for October 1, 2024.
- [29] The Tenant was potentially liable for a one-year's rent, in the amount of \$9,000.00. The Landlord reduced his rental income loss with the Tenant to \$750.00, being 8.3% of the total possible claim.
- [30] The Landlord advertised the Unit after receiving the Tenant's notice. The Landlord arranged for viewings of the Unit while in Montreal. The Landlord drove from Montreal to Charlottetown to re-rent the Unit ten days after being notified by the Tenant that she would not be moving in. Two days after arriving in Charlottetown the Landlord found a replacement tenant to move in as of October 1, 2024.
- [31] The Tenant essentially argues that the Landlord could have communicated better with Aneilla and potentially rented the Unit earlier than October 1, 2024.
- [32] I have considered the Landlord's communications with Aneilla in the context of the Landlord's ample mitigation efforts described above.
- [33] Upon review of the correspondence submitted by the parties, it appears to me that the Landlord was being open and straightforward with Aneilla when he communicated that it was unlikely she would be able to rent the Unit. At that point the Landlord already had two people view the Unit and, except for the references providing negative information, the Landlord would have given these two people priority over Aneilla.
- [34] The correspondence also shows the Landlord's continued attempts to show the Unit to Aneilla.
- [35] I am satisfied that the Landlord engaged in sufficient mitigation efforts for re-renting the Unit, including the Landlord's communications with Aneilla.
- [36] I also note that, even when a tenant has valid grounds to end a fixed-term tenancy agreement early under subsection 57(1), a tenant is still required to provide at least one full month's notice under subsection 57(2).

Subletting/Assignment

- [37] As of September 9, 2024 the Tenant believed that she could not sublet the Unit based upon her text messages with the Landlord. The Tenant stated that she was told by the Landlord that only she could live at the Unit. The Tenant stated that the Landlord stopped communicating with her.
- [38] The Landlord stated that at first he was willing to allow the Tenant to sublet the room but the Tenant needed to pay the rent due. The Tenant then started requesting the return of her security deposit and still did not pay September 2024 rent. The Landlord stated that he was frustrated with the Tenant.

- [39] If the Tenant wished to sublet or assign the tenancy agreement, then the Tenant should have kept her tenancy agreement in good standing by paying the rent that was due on September 1, 2024.
- [40] Further, the Tenant's request for the return of the security deposit is inconsistent with a subletting arrangement, where the tenancy agreement between the Landlord and the Tenant would stay in place and the Landlord would continue to hold the Tenant's security deposit. A separate subletting agreement would be arranged between the Tenant and a subtenant.
- [41] I also note that, with regard to an assignment, the Landlord would not be expected to return the security deposit before the tenancy agreement with the replacement tenant commenced.
- [42] I find that the subletting and assignment issue raised by the Tenant does not reduce the Tenant's responsibility for September 2024 rent.

Replacement Tenancy Agreement

- [43] The Landlord submitted into evidence a tenancy agreement dated September 12, 2024 that commenced on October 1, 2024. The Landlord increased the monthly rent by \$50.00 because there were now two people living in the Unit.
- [44] I am not satisfied that this increase prevented the Unit from being re-rented at an earlier date (see paragraph 17 of Commission Order LR24-63).
- [45] However, I note to the Landlord that this appears to be an unlawful rent increase. The allowable 2024 guideline rent increase set by the Director of Residential Tenancy was 3.0%. A \$50.00 increase from \$750.00 to \$800.00 is a 6.67% increase. The *Act* does not authorize a Landlord to vary the rent based upon the number of occupants.
- [46] In fact, rent increases based upon the number of occupants found in earlier drafts of the *Residential Tenancy Act* were removed from the final version. For instance, clause 11(2)(h)(iv) of the publically available 2019 *Residential Tenancy Act* draft stated:

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

*...
(h) the agreed terms in respect of*

*...
(iv) the amount of rent payable for a specified period and, if the rent varies with the number of occupants, the amount by which it varies,*

- [47] This clause was removed from the final version of the *Act* that came into force on April 8, 2023.
- [48] The Landlord cannot vary the Unit's rent based upon the number of occupants.

Gasoline Expenses and a Confederation Bridge Toll

- [49] The Landlord's gasoline and Confederation Bridge toll claims incurred for re-renting the Unit are determined under clause 85(1)(d) of the *Act*, which states:

After hearing an application, the Director may make an order

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement;

- [50] The Tenant contravened the tenancy agreement by not renting the Unit for the fixed-term. The Landlord incurred gasoline expenses and a Confederation Bridge toll as a result of this contravention.
- [51] The Landlord stated that the first gasoline cost on September 9, 2024, in the amount of \$71.50, brought his car to full before starting to travel from Montreal to Charlottetown. The Landlord incurred additional gasoline costs of \$187.67 up to his return to Montreal. This includes the Landlord's gasoline cost upon return to Montreal to bring the car's tank back to full.
- [52] The Landlord started the trip with a full tank. I note that the Landlord's first gasoline cost in Montreal (\$71.50) establishes the baseline for the Landlord's gasoline usage for the trip to Charlottetown and the return trip to Montreal. Therefore, this first cost to fill the car should not be included in the total gasoline cost.
- [53] The further \$187.67 in gasoline expenses are the actual fuel costs involved with travelling to Charlottetown and back to Montreal. The final gasoline expense in Montreal returned the Landlord's vehicle to a full tank.
- [54] I am satisfied that the Landlord incurred a \$50.25 Confederation Bridge toll for the return trip to Montreal.
- [55] The gasoline expenses and the Confederation Bridge toll total \$237.92 (\$187.67 plus \$50.25).
- [56] The Landlord stated that he travelled to Charlottetown to re-rent two units, the Tenant's room and another tenant's room. The Landlord stated that the other tenant peacefully agreed to pay September 2024 rent and therefore the Landlord did not charge the other tenant gasoline expenses and a Confederation Bridge toll.
- [57] However, because the Landlord travelled to Charlottetown to re-rent two separate rental units, I find that only half of the \$237.92 cost is recoverable against the Tenant, in the amount of \$118.96 (\$237.92 divided by 2).

CONCLUSION

- [58] The Landlord has established a claim for September 2024 rent (\$750.00), gasoline expenses and a Confederation Bridge toll (\$118.96) in the total amount of \$868.96. The Tenant will pay the Landlord this amount by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Tenant will pay the Landlord the amount of \$868.96 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.