

INTRODUCTION

- [1] The Subtenant seeks compensation in the amount of \$4,395.00 for an unlawful rent increase and overpayment of the security deposit.

DISPOSITION

- [2] I find that the evidence does not establish an unlawful rent increase. The Application is denied.

BACKGROUND

- [3] The Unit is room in a two-bedroom and one-bathroom apartment with shared facilities (the "Residential Property").
- [4] In 2019 the Tenant, another tenant not party to this proceeding ("S"), and the owner of the Residential Property (the "Owner") entered into a written month-to-month tenancy agreement (the "Primary Agreement"). S moved out of the Unit in 2021 and the Tenant lived in the Unit alone. The rent was \$862.00 due on the first day of the month with no utilities.
- [5] In September 2022, another occupant ("A") moved into the Residential Property, occupying the second room. The Tenant and A briefly lived together in the Residential Property. The Tenant and A were friends, and A did not pay the Tenant rent. The Tenant moved out of the Residential Property and sublet the Unit.
- [6] Later in September 2022, the Tenant and the Subtenant entered into an oral month-to-month subletting agreement (the "Subletting Agreement") for the Unit. Rent was \$700.00 due on the first day of the month with electricity and internet included. The Tenant paid the difference in rent. A \$500.00 security deposit was paid.
- [7] In December 2022 ("K") moved into the Residential Property. K was a mutual friend of A and the Subtenant's witness. A moved out of the Residential Property in December 2022.
- [8] From January 2023 to December 2023 the Subtenant and K lived in the Residential Property. The parties disputed whether or not K paid rent to the Tenant.
- [9] In September 2023, the Subtenant found a *Form 8 Tenant Notice of Annual Allowable Rent Increase* (the "Notice") posted to the Residential Property's door. Effective January 1, 2024 the rent for the Primary Agreement increased to \$888.00.
- [10] In January 2024 K moved out of the Residential Property. The Subtenant and the Tenant agreed to amend the Subletting Agreement. The rent was reduced to \$600.00 and the Subtenant would pay for his own electricity. The Tenant continued to pay the balance of the rent.
- [11] In February 2024 the Tenant and another subtenant ("N") entered into a subletting agreement. Rent was \$600.00 due on the first day of the month and included furniture and the Subtenant and N split utilities.
- [12] In August 2024 N moved out of the Residential Property.
- [13] On October 11, 2024 the Subtenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking a monetary order for an unlawful rent increase and overpayment of the security deposit.
- [14] On November 14, 2024 the Subtenant vacated the Unit because of an eviction notice served by the Owner.

- [15] On November 19, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for December 12, 2024.
- [16] On December 11, 2024 the Rental Office emailed the parties a 74-page PDF document (the "Evidence Package" or "EP").
- [17] On December 12, 2024 the Tenant, the Subtenant and the Subtenant's witness called into the teleconference hearing for determination of the Application. The parties confirmed receipt of the Evidence Package and also confirmed that all of the documents submitted to the Rental Office were included. After the hearing, the Tenant submitted 11-pages of additional evidence and the Subtenant submitted 5-pages of additional evidence (the "Additional Evidence"). The Additional Evidence was emailed to the Tenant and the Subtenant.

ISSUE

- A. Must the Tenant compensate the Subtenant for an unlawful rent increase and overpayment of the security deposit?

ANALYSIS

- [18] For the reasons below, I find that that evidence does not establish an unlawful rent increase or overpayment of the security deposit, and the Application is denied.
- [19] The Subtenant is seeking a monetary order in the amount of \$4,395.00 for an unlawful rent increase and overpayment of the security deposit.
- [20] The Subtenant stated that throughout the Subletting Agreement the rent was \$700.00 and then reduced to \$600.00. The Subtenant stated that after he received the Notice, he learned that the rent for the Residential Property was \$862.00 in 2023 and \$888.00 in 2024. The Subtenant stated that the "Tenant fraudulently misrepresented the terms of the Subletting Agreement by not disclosing the Primary Agreement's rent." The Subtenant accused the Tenant of "breach of trust and unlawful enrichment."
- [21] The Subtenant stated that the other occupants at the Residential Property were also paying rent to the Tenant. The Subtenant provided his calculations for the excessive rent claims and the amount he is owed (EP11). The Subtenant stated that he should have paid half of the rent from the Primary Agreement (\$431.00 and \$444.00), and the security deposit should have been \$418.00. The Subtenant stated that he paid \$4,314.00 in excessive rent and an \$81.00 overpayment of the security deposit.
- [22] The Subtenant's witness stated that he was the person who suggested the Subtenant rent the Unit. The Subtenant's witness stated that he was the middle-person between the Subtenant and the Tenant. The Subtenant would e-Transfer the rent and the security deposit to the Subtenant's witness and then the Subtenant's witness would e-transfer the rent and the security deposit to the Tenant. This arrangement went on until the Subtenant arrived in Prince Edward Island and occupied the Residential Property.
- [23] The Tenant stated that the Subtenant knew about the terms of the Primary Agreement. The Tenant stated that the Subtenant was only paying \$700.00 (utilities included). The Tenant stated that in 2022/23 he paid the \$162.00 balance of the rent, despite not living in the Residential Property. In 2024, the Subtenant's rent was reduced to \$600.00 (electricity excluded). The Tenant stated that he paid the \$288.00 balance of the rent.
- [24] The Tenant stated that the Subtenant never paid more than the rent in the Primary Agreement. The Tenant stated that furniture was also provided and electricity was included for a period of the tenancy.

- [25] The Tenant stated that in August 2024 he told the Subtenant to contact the Owner and create a new direct tenancy agreement. The Tenant stated that he did not want to be a part of the arrangement any longer. The Tenant stated that he was covering a portion of the rent throughout the tenancy despite not living in the Residential Property since September 2022.
- [26] I have reviewed the evidence and I find as follows.
- [27] It is undisputed that the Primary Agreement's rent in 2023 was \$862.00 and \$888.00 in 2024, excluding utilities.
- [28] The Subletting Agreement's rent was \$700.00 (utilities included) and starting January 1, 2024 the rent was reduced to \$600.00 (electricity excluded).
- [29] Subsection 30(6) of the *Residential Tenancy Act* (or 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.*
- [30] In Order LR24-72 the Island Regulatory and Appeals Commission (the "Commission") made comments regarding subsection 30(6), which stated:

As can be seen, subsection 30(6) creates two separate agreements in the case of a sublet: (1) the tenancy agreement between the landlord and tenant and (2) the subletting agreement between the tenant and subtenant(s). Therefore, when a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the subtenant(s) enter into a new subletting agreement. While the Act includes a definition of tenancy agreement, it does not define subletting agreement. In such a case, it is left to the Commission to interpret what is meant by "subletting agreement", and in our opinion, the subletting agreement may provide additional services to a subtenant that are not included in the tenancy agreement.

- [31] 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.*
- [32] I note that the Tenant did not charge the Subtenant more rent than under the Primary Agreement, and the Tenant and the Subtenant did not occupy the Residential Property together and that 30(8)(b) is not applicable.
- [33] In Order LR24-72 the Commission found that a tenant could charge a subtenant higher rent than the tenant paid under their tenancy agreement with the owner.

- [34] In this case, the Tenant did not live in the Residential Property with the Subtenant. The Tenant and the Subtenant had an oral, month-to-month Subletting Agreement, where the Subtenant paid \$700.00, with utilities and some furnished items provided in the Residential Property. The Tenant paid the remaining balance, in the amount of \$162.00 to the Owner owed under the Primary Agreement.
- [35] In January 2024 the Tenant and the Subtenant agreed to amend the Subletting Agreement. The rent was reduced to \$600.00, without utilities. The Tenant's furnished items remained in the Residential Property. The Tenant paid the remaining balance, in the amount of \$288.00 to the Owner owed under the Primary Agreement.
- [36] On the evidence presented, I am not satisfied that the Tenant charged other occupants rent for the Residential Property for any significant period of time.
- [37] I find that the evidence does not establish an unlawful rent increase or overpayment of the security deposit, with regard to the Subletting Agreement. The Application is denied.

IT IS THEREFORE ORDERED THAT

1. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 19th day of February, 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.