

INTRODUCTION

- [1] The Landlord wants to keep the Tenants' security deposit for unpaid rent. The Tenants want the Landlord to return the security deposit.

DISPOSITION

- [2] I find that the Landlord will keep the Tenants' security deposit for unpaid rent, in the amount of \$1,661.29.

BACKGROUND

- [3] The Unit is the lower level of a split entry, single family dwelling owned by the Landlord and the Landlord's representative (the "Representative") since April of 2021. The Unit has two bedrooms and one bathroom.
- [4] On November 19, 2024 the Landlord and the Tenants entered into a written, fixed-term tenancy agreement for the period of January 1, 2025 to April 30, 2025. A security deposit of \$1,650.00 was paid on November 22, 2024. Rent in the amount of \$1,650.00 was due before the first day of the month.
- [5] On December 26, 2024 the Tenants emailed the Representative stating that the Tenants would not be moving into the Unit. The Tenants never lived in the Unit.
- [6] On January 2, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office") seeking to keep the Tenants' security deposit for unpaid rent.
- [7] On January 10, 2025 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office seeking the return of their security deposit.
- [8] On January 13, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for February 27, 2025 along with a copy of the Landlord Application and the Tenant Application.
- [9] On February 10, 2025 the Rental Office emailed the parties a 47-page PDF (the "Evidence Package").
- [10] On February 27, 2025 the Landlord, the Representative and the Tenants 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.

ISSUE

- A. Can the Landlord keep the Tenants' security deposit for unpaid rent?

ANALYSIS**Tenants' Notice December 26, 2024**

- [11] The Tenants decided not to move into the Unit because of an employment opportunity elsewhere.
- [12] On December 26, 2024, six days before the agreed upon move-in date, the Tenants emailed the Representative advising that the Tenants would not be moving into the Unit.

- [13] 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.

- [14] The Tenants' December 26, 2024 notice only ended the tenancy as of April 30, 2025.

- [15] The Landlord was required to mitigate (reduce) losses.

Mitigation

- [16] The Representative's evidence regarding mitigation is summarized as follows.

- [17] The Representative has attempted to re-rent the Unit but has not found replacement tenants as of the February 27, 2025 hearing date.

- [18] On December 31, 2024 the Representative listed the Unit on Facebook Marketplace. The Representative has received 30 to 40 inquiries regarding the Unit which has led to 10 viewings. The Representative has not found a suitable tenant for January or February 2025. Some of the people that viewed the Unit want a May or June move in date because of the length of their tenancy agreements and the requirement to give adequate notice to their landlords.

- [19] The Representative stated that the Landlord only wants to keep the security deposit even though the Landlord still has not re-rented the Unit and has higher losses.

- [20] The Tenants stated that they have not referred any potential tenants to the Representative.

- [21] 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.

- [22] The Landlord and the Tenants are also responsible for reducing losses at common law.

- [23] I note that Island Regulatory and Appeals Commission Order LR20-39 discussed mitigation under the *Rental of Residential Property Act*, the former rental legislation, stating in part as follows:

"In addressing the lessor's duty to mitigate under section 29 of the Act, the Commission finds that the adequacy of mitigation, not just whether or not mitigation occurred, may be considered. The quantum of the claim and the remaining duration of the rental agreement are relevant facts to consider when addressing the adequacy of mitigation. What may be considered reasonable efforts to mitigate for a small claim or a short period of time may be lacking for a large claim or an extended period of time."

- [24] I find that the Landlord's mitigation efforts under the *Residential Tenancy Act* must also be considered in light of the amount claimed.

- [25] Based upon the evidence presented, I am satisfied that the Representative has engaged in sufficient efforts to attempt to re-rent the Unit. The Representative advertised the Unit within a reasonable period of time. I am also satisfied by the number of inquiries and viewings of the Unit

that the Representative has engaged in reasonable mitigation efforts. Further, the Landlord solely seeks to keep the security deposit and is not seeking additional compensation for unpaid rent.

Commencement of Rights and Obligations

- [26] The Tenants argue that the Landlord should return the security deposit based upon the terms of the tenancy agreement. The Tenants point to the following “*Breaking the Lease*” clause on page 3 of the agreement:

“If the Tenant break the lease by any reasons during the lease term, the damage (security) deposit and one month of rent will be kept.”

- [27] The Tenants argue that as of December 26, 2024 the fixed-term (January 1 to April 30, 2025) had not started.

- [28] The Tenants argue that the *contra proferentem* rule of contract is applicable. The Tenants essentially argue that the Landlord included an ambiguous clause in the tenancy agreement and the preferred meaning should be against the Landlord’s interests.

- [29] I find that the Landlord does not need to rely on the “*Breaking the Lease*” clause of the tenancy agreement, which claims that the Landlord can keep the security deposit and one month’s rent (\$3,300.00) regardless of whether the Landlord has an actual loss.

- [30] In this case the Landlord has established an actual rental income loss because the Tenants did not rent the Unit for the agreed upon fixed term.

- [31] I note that the *Residential Tenancy Act* governs the tenancy agreement. In particular, subsection 2(2) states as follows:

Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before, on or after the date this Act comes into force.

- [32] Section 13 of the *Act* addresses the rights and obligations under a tenancy agreement, stating as follows:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant occupies the rental unit.

- [33] Based upon sections 2 and 13, the obligation of the Tenants to rent the Unit for the fixed term commenced on November 19, 2024, the date the agreement was signed. This obligation remained in effect even though the Tenants gave notice on December 26, 2024 and never occupied the Unit. As stated above, the Tenants’ notice would only end the tenancy as of April 30, 2025.

- [34] Subsection 19(1) of the *Act* required the Tenants to pay rent when it was due. This subsection states:

A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.

- [35] The Tenants breached the *Act* and the agreement by not paying the rent due from January 1, 2025 onwards. The Landlord therefore has a valid basis under the *Act* to keep the Tenants’ security deposit for unpaid rent.

[36] The Landlord's claim is authorized by subsection 85(1), including clause 85(1)(d), 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;

[37] I note that the Landlord must not include terms in future tenancy agreements that automatically allows the Landlord to keep the security deposit, regardless of whether the Landlord has actually incurred a loss. This type of clause conflicts with subsection 15(a) of the *Act*, which states:

A landlord shall not

...

require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement.

CONCLUSION

[38] The Landlord Application is allowed and the Tenant Application is denied. The Landlord will keep the Tenants' security deposit, including interest, in the amount of \$1,661.29 for unpaid rent.

IT IS THEREFORE ORDERED THAT

1. The Landlord will keep the Tenants' security deposit, including interest, in the amount of \$1,661.29.

DATED at Charlottetown, Prince Edward Island, this 5th day of March, 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.