

INTRODUCTION

- [1] The Tenant seeks a return of rent based upon an unlawful rent increase.
- [2] The Tenant disputes an eviction notice for unpaid rent and for compliance with a government authority order.

DISPOSITION

- [3] I find that the Tenant has established that the Landlord unlawfully increased the rent from September 2023 onwards resulting in a rent overpayment of \$6,400.00. This amount is offset against the Tenant's rent and utilities due from January 2025 onwards.
- [4] The eviction notice is invalid, the tenancy will continue in full force and effect and the Tenant can continue to live in the Unit.

BACKGROUND

- [5] The Unit is a three-bedroom, one-bathroom single family dwelling that the Landlord owns.
- [6] The Tenant and the Landlord entered into a written, fixed-term tenancy agreement for the Unit for the period of August 1, 2019 to July 31, 2020. At the end of the fixed term the tenancy continued on a month-to-month basis. The Tenant paid a \$1,200.00 security deposit before moving into the Unit.
- [7] The monthly rent for the Unit was \$1,200.00 from August 2019 to August 2023. The monthly rent charged increased to \$1,600.00 from September 1, 2023 onwards. Rent is due on the first day of the month. The cost of electricity is in addition to the monthly rent.
- [8] On January 22, 2025 the Tenant found in the Unit an unsigned *Form 4(A) Eviction Notice* effective February 22, 2025 (the "Notice") for unpaid rent and for compliance with a government authority order. The Tenant did not see who left the Notice in the Unit.
- [9] On January 28, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking a return of rent and disputing the Notice.
- [10] On February 4, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for February 25, 2025 along with a copy of the Application.
- [11] On February 20, 2025 the Rental Office provided the parties with a 21-page evidence package.
- [12] On February 25, 2025 the Tenant, the Tenant's witness and the Landlord connected to the teleconference hearing. The Landlord was ill and the hearing was adjourned.
- [13] On February 25, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing rescheduled for March 6, 2025 along with a copy of the Application.
- [14] On March 6, 2025 the Tenant and the Tenant's witness joined the teleconference hearing. I telephoned the Landlord and left a voicemail message with the teleconference information and the Rental Office's telephone number. I waited about ten minutes and then the hearing proceeded in the Landlord's absence. The Tenant provided additional evidence after the hearing.

ISSUES

- A. Must the Landlord return rent to the Tenant because of an unlawful rent increase?
- B. Must the Tenant vacate the Unit due to the Notice?

ANALYSIS**A. Must the Landlord return rent to the Tenant because of an unlawful rent increase?**

- [15] The Tenant's undisputed evidence establishes that the monthly rent for the Unit increased from \$1,200.00 to \$1,600.00 on September 1, 2023. This was a 33.3% increase.
- [16] It appears that the Landlord increased the rent charged because the Landlord's mortgage payments had increased.
- [17] I note that the 2023 allowable guideline percent increase was 0.0% under subsection 49(4) of the *Residential Tenancy Act* (or the "Act").
- [18] The Landlord did not apply to the Rental Office for an above guideline rent increase. The services included in the rent did not change.
- [19] I find that on September 1, 2023 the Landlord unlawfully increased the Unit's rent by \$400.00.
- [20] The Landlord will not charge the Tenant a monthly rent greater than \$1,200.00 until the Landlord increases the rent in accordance with the *Residential Tenancy Act*. The Tenant must also pay the Landlord the Unit's monthly electricity cost in addition to the \$1,200.00 monthly rent.
- [21] The Tenant's undisputed evidence establishes that the Tenant paid the \$1,600.00 monthly rent charged from September 2023 to December 2024, being 16 months. The Tenant also paid the electricity owed to the Landlord during this period. Therefore, the Landlord unlawfully collected \$6,400.00 (16 months multiplied by \$400.00) in rent, which will be credited to the Tenant under subsection 50(8).
- [22] The Tenant has not paid the monthly rent (\$1,200.00) from January 2025 to March 2025, in the amount of \$3,600.00. The Tenant has not paid the utilities due for January 2025 and February 2025 in the amount of \$950.00.
- [23] I offset the unlawful rent increase collected by the unpaid rent and utilities. The Landlord owes a net balance to the Tenant in the amount of \$1,850.00, calculated as follows.

Item	Amount
Unlawful Rent Collected (SEP 2023 – DEC 2024)	\$6,400.00
Rent (JAN – MAR 2025)	-\$3,600.00
Electricity (JAN – FEB 2025)	-\$950.00
Balance	\$1,850.00

- [24] Due to the offsets in this Order, the rent of \$3,600.00 from January 2025 to March 2025 is considered paid and the utilities of \$950.00 from January 2025 to February 2025 is also considered paid.
- [25] There is a remaining balance of \$1,850.00 owed by the Landlord to the Tenant.
- [26] The rent for April 2025 of \$1,200.00 is considered paid by this Order, leaving a \$650.00 balance.

[27] This remaining \$650.00 balance is a credit to the utilities that become payable by the Tenant from March 2025 onwards.

[28] Therefore, when the Tenant's March 2025 electricity bill is provided by the Landlord, there will be a \$650.00 deduction in favour of the Tenant. Any remaining credit will be applied against the next utility bills until the credit is fully used up.

B. Must the Tenant vacate the Unit due to the Notice?

Unpaid Rent

[29] The Landlord's first reason for ending the tenancy is under subsection 60(1) of the *Act*, which states:

A landlord may end a tenancy if rent is unpaid after the day it is due, by giving a notice of termination effective on a date that is not earlier than 20 days after the date the tenant receives the notice.

[30] Clause 60(4)(a) provides that an eviction notice for unpaid rent can be invalidated as follows:

Within 10 days after receiving a notice of termination under this section, the tenant may (a) pay the overdue rent, in which case the notice of termination has no effect.

[31] On January 22, 2025, the date the Tenant received the Notice, the Tenant had already paid excess rent to the Landlord due to an unlawful rent increase.

[32] As the Tenant had overpaid rent at the time the Notice was served, the Notice was invalidated under clause 60(4)(a). The Landlord cannot end the tenancy for unpaid rent.

Compliance with a Governmental Authority Order

[33] The Landlord's second reason for ending the tenancy is under clause 61(1)(k), which states:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(k) the rental unit is required to be vacated to comply with an order of a federal, Prince Edward Island or municipal government authority;

[34] In this case the Landlord is apparently seeking to end the tenancy based upon a court order related to a divorce. This is not a valid basis for ending the tenancy because it is not a government authority that is requiring vacant possession of the Unit. Instead, the person seeking vacant possession may be the Landlord's ex-spouse.

[35] As a result, this reason for ending the tenancy is invalid.

[36] Further, I note that section 105 of the *Act* provides tenant protections regarding divorce and family law proceedings that impact a tenant. This section states:

Despite any other enactment, no order of a court in a proceeding involving a foreclosure or an estate, a proceeding under the Divorce Act (Canada) or the Family Law Act R.S.P.E.I. 1988, Cap. F-2.1, or another proceeding that affects possession of a rental unit is enforceable against a tenant of the rental unit unless the tenant was a party to the proceeding.

- [37] At the hearing the Tenant stated that he was not provided any notice of any divorce or family law proceedings regarding the Landlord except for the particulars in the Notice.
- [38] Based upon the evidence presented, it has not been established that the Tenant was a party to any court proceedings regarding the Landlord.

Eviction Notice Content Requirements

- [39] Landlords must sign eviction notices.
- [40] Section 53 of the Act includes the following requirements for a valid eviction notice:

In order to be effective, a notice of termination shall be in writing and shall

- (a) be signed and dated by the landlord or tenant giving the notice;*
- (b) give the address of the rental unit;*
- (c) state the effective date of the notice;*
- (d) except for a notice of termination under section 56, state the grounds for ending the tenancy;*
- (e) be given to the other party in accordance with section 100; and*
- (f) when given by a landlord, be in the approved form.*

- [41] In Order LR24-66 the Island Regulatory and Appeals Commission stated as follows:

“...Pursuant to clause 53(a) of the Act, a notice of termination shall be signed by the landlord in order to be effective. There is no signed version of this document in evidence before the Commission. Without a signed Form 4(A) in evidence, the eviction fails on that point alone.”

- [42] In this case the Notice has already been invalidated based upon the merits. I found that the Tenant does not owe rent to the Landlord and there is no evidence of a government authority order requiring the Tenant to move out of the Unit.
- [43] Furthermore, the Notice is also invalid for a procedural reason because the Landlord did not sign the Notice.

CONCLUSION

- [44] The Application is allowed.
- [45] The Tenant has established an unlawful rent increase claim of \$6,400.00. This amount is offset against unpaid rent and utilities as provided below.
- [46] The Notice is invalid and the tenancy agreement will continue in full force and effect. The Tenant can continue to live in the Unit.

IT IS THEREFORE ORDERED THAT

1. Due to the offsets in this Order, the rent of \$3,600.00 from January 2025 to March 2025 is considered paid and the utilities of \$950.00 from January 2025 to February 2025 is also considered paid.
2. Due to the offsets in this Order, the rent for April 2025 of \$1,200.00 is considered paid.
3. Due to the offsets in this Order, the Tenant has a \$650.00 credit for utilities from March 2025 onwards.

4. The Landlord will not charge the Tenant a monthly rent greater than \$1,200.00 until the Landlord increases the rent in accordance with the *Residential Tenancy Act*. The Tenant must also pay the Landlord the Unit's monthly electricity cost in addition to the \$1,200.00 monthly rent.
5. The tenancy agreement will continue in full force and effect. The Tenant can continue to live in the Unit.

DATED at Charlottetown, Prince Edward Island, this 10th 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.