

INTRODUCTION

- [1] The Landlord claims against the Tenant for rent and utilities owing. The Landlord seeks to retain the Tenant's entire security deposit plus additional compensation.

DISPOSITION

- [2] I find that the Tenant owes the Landlord February 2025 rent plus Wi-Fi internet, furnace oil and electricity utility charges. The Landlord's claim for water charges is denied.
- [3] The Landlord's established claims are offset from the security deposit, including interest. The Landlord will retain the entire security deposit of \$811.04 and the Tenant owes a balance of \$624.79 to the Landlord.

BACKGROUND

- [4] The Unit is a bedroom with shared services and facilities in a three-bedroom, two-bathroom single family dwelling that the Landlord has owned since August of 2017.
- [5] The Landlord and the Tenant entered into a written, fixed-term tenancy agreement for the Unit for the period of September 1, 2024 to June 1, 2025 (the "Tenancy Agreement"). A security deposit of \$800.00 was paid on September 1, 2024.
- [6] Rent in the amount of \$850.00 was due on the first day of the month. The Tenancy Agreement lists the included and excluded services. Schedule "D" states in part:
- "Tenant will pay 16% of the total utilities (wifi, Heat, electricity)"*
- [7] On February 1, 2025 the Tenant did not pay February's rent.
- [8] On February 2, 2025 the Tenant text messaged the Landlord stating that he had moved out of the Unit.
- [9] On February 13, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") claiming against the Tenant for rent and utilities owing.
- [10] On February 24, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for March 25, 2025, along with a copy of the Application.
- [11] On March 19, 2025 the Rental Office emailed the parties a 19-page evidence package (the "Evidence Package"). The hearing time was also changed in a revised notice of hearing.
- [12] On March 25, 2025 the Landlord and the Landlord's interpreter participated in a teleconference hearing. The Tenant did not join the teleconference. The Rental Office telephoned the Tenant but there was no response. The hearing proceeded in the Tenant's absence about fifteen minutes after the scheduled time.
- [13] During the hearing the Landlord confirmed that she received the Evidence Package and confirmed that all documents submitted to the Rental Office were included. The Landlord submitted additional evidence after the hearing.

ISSUE

- A. Has the Landlord established claims against the Tenant for rent and utilities owing?

ANALYSIS**Rent**

- [14] The procedure for ending a fixed-term tenancy by notice is stated in subsection 55(3) of the *Residential Tenancy Act* (or 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.

- [15] The Tenant's February 2, 2025 notice only ended the Tenancy Agreement as of June 1, 2025. Therefore, the Tenant was responsible for rent from February 1, 2025 until the end date, subject to the Landlord's duty to try and reduce (mitigate) rental income losses.

- [16] I find that the Tenant abandoned the Unit because the Tenant vacated the Unit, the Tenancy Agreement was not properly terminated and rent was overdue (subsection 42(2) of the *Act*).

- [17] Section 46 of the *Act* states:

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.

- [18] The following reasoning from Island Regulatory and Appeals Commission Order LR20-39 decided under the former legislation remains relevant to a landlord's duty to reduce losses under the *Residential Tenancy Act*. This decision states in part as follows:

"...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."

- [19] As of February 2, 2025 there were almost four months remaining in the fixed term of the Tenancy Agreement. With a monthly rent of \$850.00, the potential rent owing claim against the Tenant would be \$3,400.00.

- [20] In these circumstances the Landlord was expected to make substantial efforts to re-rent the Unit.

- [21] However, the Landlord's evidence at the hearing was that the Unit has not been advertised for rent because the Landlord wanted to wait until the claims in the Application were determined by the Rental Office. The Landlord also stated that currently the rental market is "*not good*."

- [22] The reasons provided by the Landlord did not reduce her responsibility to attempt to re-rent the Unit by advertising the property.

- [23] The Landlord has not mitigated her losses and therefore the Landlord's rent owing claim against the Tenant is limited.

- [24] The Landlord learned that the Tenant vacated the Unit on February 2, 2025. The Landlord would need some time to advertise the Unit, find a suitable replacement tenant and enter into a written agreement. However, the rental unit is located in Charlottetown and the rent charged is competitive. I find that the Landlord can only claim against the Tenant up to February 28, 2025.
- [25] Although it may have taken a longer period for a new tenant to move in, an exact date is unknown because the Landlord has not properly mitigated losses.
- [26] I find that the Tenant is not responsible for any rent or utilities for the Unit after February 28, 2025 and the Tenancy Agreement is terminated as of this date.

Water

- [27] The Landlord claims against the Tenant for part of the Unit’s water cost.
- [28] However, based upon the terms of the Tenancy Agreement I am not satisfied that the Tenant is responsible for part of this cost. The Tenancy Agreement states that water, hot water and other services are included in the rent. Further, Schedule “D” does not specifically state that the Tenant is responsible for part of the water cost.
- [29] Services included in the rent do not have a separate charge. As a result, the Landlord’s claim against the Tenant for water charges is denied.
- [30] In the Tenancy Agreement Wi-Fi internet, heat and electricity are listed as excluded services and Schedule “D” specifically states that the Tenant is responsible for 16% of these costs. These claims are determined below.

Wi-Fi Internet

- [31] The Wi-Fi internet cost from September 1, 2024 to February 28, 2025 totals \$526.83. The cost for September 2024 is in the pro-rated amount of \$123.47.
- [32] The Tenant is responsible for 16% of this cost, in the amount of \$84.29, calculated as follows:

WI-FI INTERNET	
DATE	AMOUNT
Sep-24	\$123.47
Oct-24	\$58.60
Nov-24	\$86.19
Dec-24	\$86.19
Jan-25	\$86.19
Feb-25	\$86.19
Total	\$526.83
16% of Total	\$84.29

Furnace Oil

[33] The furnace oil cost for fill-ups on October 8, 2024, November 18, 2024, December 18, 2024, January 13, 2025 and February 3, 2025 totals \$2,553.48.

[34] The Tenant is responsible for 16% of this cost, in the amount of \$408.56, calculated as follows:

FURNACE OIL	
DATE	AMOUNT
8-Oct-24	\$375.10
18-Nov-24	\$403.89
18-Dec-24	\$522.38
13-Jan-25	\$608.16
3-Feb-25	\$643.95
Total	\$2,553.48
16% of Total	\$408.56

Electricity

[35] The electricity cost was \$581.11 from September 1, 2024 to February 28, 2025. The electricity cost for September 1 to 4, 2024 is estimated based upon the bill from September 5, 2024 to October 4, 2024. The electricity bill from February 6, 2025 to March 6, 2025 is pro-rated to February 28, 2025.

[36] The Tenant is responsible for 16% of this cost, in the amount of \$92.98, calculated as follows:

ELECTRICITY	
DATE	AMOUNT
1 SEP 2024 - 5 SEP 2024	\$12.57
5 SEP 2024 - 4 OCT 2024	\$91.10
4 OCT 2024 - 4 NOV 2024	\$97.04
4 NOV 2024 - 4 DEC 2024	\$96.17
4 DEC 2024 - 6 JAN 2025	\$108.43
6 JAN 2025 - 6 FEB 2025	\$105.97
6 FEB 2025 - 28 FEB 2025	\$69.83
Total	\$581.11
16% of Total	\$92.98

CONCLUSION

[37] The Application is allowed in part.

[38] The Landlord will retain the Tenant's security deposit, including interest, in the amount of \$811.04. There is a net balance owed by the Tenant to the Landlord, in the amount of \$624.79, which the Tenant will pay by the timeline below. This balance is calculated as follows:

OFFSETS	
February 2025 rent	\$850.00
Wi-Fi internet	\$84.29
Furnace oil	\$408.56
Electricity	\$92.98
Security deposit	-\$800.00
Interest	-\$11.04
Balance	\$624.79

IT IS THEREFORE ORDERED THAT

1. The Tenancy Agreement is terminated effective February 28, 2025. The Tenant is not responsible for any rent or utilities for the Unit after February 28, 2025.
2. The Landlord will keep the Tenant's security deposit, including interest, in the amount of \$811.04.
3. The Tenant will pay the Landlord \$624.79 by May 2, 2025.

DATED at Charlottetown, Prince Edward Island, this 2nd day of April, 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.