

**INTRODUCTION**

- [1] The Tenant applied to the Residential Tenancy Office (the "Rental Office") for a return of rent from the Landlord based upon an unlawful rent increase.

**DISPOSITION**

- [2] The application is allowed. The Landlord will return rent to the Tenant and the Second Tenant on the terms stated below.

**BACKGROUND**

- [3] The Unit is a two-bedroom, one-bathroom apartment located in a five-unit building (the "Residential Property") that the Landlord purchased on October 6, 2023. The Unit was vacant when the Landlord purchased the Residential Property.
- [4] The Landlord and the Tenant entered into a written, one-year fixed-term tenancy agreement for the Unit that started on April 1, 2024. Rent in the amount of \$1,595.00 is due on the first day of the month and a \$750.00 security deposit was paid on February 25, 2024.
- [5] There are two additional tenancy agreements. There is an agreement between the Landlord and the Second Tenant and an agreement between the Tenant and the Second Tenant. The effect of these agreements is that the Tenant pays \$395.00 monthly to the Landlord and the Second Tenant pays \$1,200.00 monthly to the Landlord. The Tenant also makes monthly payments to the Second Tenant, which are calculated based upon the Tenant's income.
- [6] On December 2, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine* with the Rental Office claiming against the Landlord based upon an unlawful rent increase. The Tenant amended this application on December 4, 2024 (the "Application"). The Application seeks a return of rent for the Tenant and the Second Tenant.
- [7] On December 17, 2024 the Rental Office emailed the Landlord and the Tenant notice of a teleconference hearing scheduled for January 23, 2025 and a copy of the Application.
- [8] On January 20, 2025 the Rental Office emailed the Landlord and the Tenant an evidence package.
- [9] On January 23, 2025 the teleconference hearing was adjourned because the Landlord's representative (the "Representative") was unable to participate in the hearing.
- [10] On February 11, 2025 the Rental Office mailed and emailed the Landlord, the Tenant and the Second Tenant notice of a teleconference hearing rescheduled for March 4, 2025 and a copy of the Application. The Second Tenant was provided with notice of the hearing under section 81 of the *Residential Tenancy Act* (or the "Act") as a person likely to be materially affected by the determination of the Application.
- [11] On February 28, 2025 the Rental Office emailed the parties a 43-page evidence package (the "Evidence Package").
- [12] On March 4, 2025 the Tenant, the Representative and the Landlord's property manager joined the teleconference hearing. I telephoned a representative of the Second Tenant and was advised that the Second Tenant would not be participating in the hearing. The hearing proceeded in the Second Tenant's absence. The Landlord and the Tenant confirmed receipt of the Evidence Package and confirmed that all documents submitted to the Rental Office were included.

- [13] On March 26, 2025 the Rental Office emailed the parties additional Director evidence, being part of Order LD23-310. This was a greater than allowable rent increase decision for the Residential Property issued by the Rental Office on July 11, 2023. The parties were provided an opportunity to provide written submissions regarding this additional evidence.

## ISSUE

- A. Did the Landlord unlawfully increase the Unit's rent?

## ANALYSIS

- [14] For the reasons below, I find that the Landlord must return rent to the Tenant and the Second Tenant under subsection 50(8) of the *Act*.
- [15] On April 1, 2024 the Landlord increased the Unit's rent by \$592.00 and charged the Tenant a monthly rent of \$1,595.00, a 59.02% increase. The Tenant paid the Landlord \$395.00 monthly from April 2024 to March 2025 and the Second Tenant paid the Landlord \$1,200.00 monthly during this period.
- [16] The Tenant received a copy of a Form 12 application (the "Form 12") from a former tenant of the Unit ("MM"). The Tenant stated that she was told by MM that he paid rent of \$1,003.00 when he lived in the Unit.
- [17] The Form 12 led to an earlier Rental Office decision. In Order LD23-310 the Unit's lawful monthly rent was set at \$1,003.00 effective August 1, 2023. The Order states that the monthly rent included heat, water, hot water, cooking stove, refrigerator, washer and dryer (coin), janitorial, and parking.
- [18] I note that the Unit's rent was not eligible for any rent increase until August 1, 2024 under subsection 48(1), being at least 12 months since the last rent increase.
- [19] I also note that the 2024 annual guideline rent increase established by the Director of Residential Tenancy was 3.0%. The Landlord did not apply to the Rental Office for an above guideline rent increase.
- [20] The Landlord argued that when it purchased the Unit the Landlord did not know about rent control for vacant units, the Unit's rent history or what services were included in the rent.
- [21] However, the Landlord's lack of knowledge regarding rent control, the previous rents and services does not defend against the unlawful rent increase claim.
- [22] Before deciding to purchase the Residential Property, the Landlord should have insisted that the former owner disclose the rent history and included services for all rental units, vacant and occupied.
- [23] The Landlord argues that operating expenses have significantly increased and the Landlord is currently operating the Residential Property at a loss of about \$4,000.00 per month. These are relevant considerations for above guideline rent increases under section 50 of the *Act*, particularly subsection 50(3). This argument does not provide a defence against an unlawful rent increase claim.
- [24] The coin operated washing machine in the Residential Property's common area was not working when the Tenant moved in. Around May of 2024 the Landlord had a washing machine installed that did not require payment. The Landlord estimates that the coin operated washing machine earned about \$200.00 per month. This expense and income reduction would be relevant for an above guideline rent increase application but is also not a valid defence.

- [25] The Landlord provides snow removal, grass cutting and pest control services for the Residential Property. Based upon the evidence presented, I am not satisfied that these services were not provided by the former landlord.
- [26] The standard wording of the Form 12 specifically lists a number of services but the standard wording does not specifically list snow removal, grass cutting and pest control as services. These services may have been provided by the former owner but not stated in Order LD23-310.
- [27] I find that the Landlord must pay the Tenant \$4,740.00 for the unlawful rent collected from April 2024 to March 2025 (12 months multiplied by \$395.00) by the timeline below.
- [28] The Second Tenant did not provide the Rental Office with documentary evidence or participate in the teleconference hearing. However, the Second Tenant did not oppose the compensation to which it is entitled.
- [29] As a result, I find that the Landlord must also pay the Second Tenant \$2,364.00 for the unlawful rent collected from April 2024 to March 2025 (12 months multiplied by \$197.00) by the timeline below.
- [30] The Landlord must return to the Tenant and the Second Tenant any April 2025 rent paid in excess of \$1,003.00 by the timeline below.
- [31] The Landlord will not collect from the Tenant and the Second Tenant a monthly rent greater than \$1,003.00 until the Landlord increases the Unit's rent in accordance with the *Residential Tenancy Act*.

#### Form of Tenancy Agreement

- [32] The Landlord and the Tenant signed a *Standard Form of Rental Agreement*, which was a document based upon the former legislation, the *Rental of Residential Property Act* and its accompanying regulations.
- [33] On April 8, 2023 the *Residential Tenancy Act* replaced the former legislation. Landlords are now required to prepare written tenancy agreements containing the information specified in subsection 11(2), which states:

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

- (a) the provisions set out in Division 4;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord, or the landlord's agent, and the tenant;*
- (f) the services and facilities included in the rent;*
- (g) the amount of rent that was charged, and the services and facilities that were provided, to the previous tenant of the rental unit, unless there was no previous tenant;*
- (h) the name and contact information of any person the tenant is to contact for emergency repairs; and*
- (i) the agreed terms in respect of
  - (i) the date on which the tenancy starts,*
  - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis,*
  - (iii) if the tenancy is a fixed-term tenancy, the date on which the term ends,*
  - (iv) the amount of rent payable for a specified period,**

(v) the day on which the rent is due and the frequency of payment, and  
(vi) the amount of any security deposit and the date the security deposit  
was or is required to be paid.

[34] The standard form tenancy agreement (*Form 1 – Standard Form of Tenancy Agreement*) is available on the Rental Office's website.

**IT IS THEREFORE ORDERED THAT**

1. The Landlord will pay the Tenant \$4,740.00 by June 2, 2025.
2. The Landlord will pay the Second Tenant \$2,364.00 by June 2, 2025.
3. The Landlord will pay the Tenant and the Second Tenant their share of any April 2025 rent paid in excess of \$1,003.00 by May 2, 2025.
4. The Landlord will not collect from the Tenant and the Second Tenant a monthly rent greater than \$1,003.00 until the Landlord increases the Unit's rent in accordance with the *Residential Tenancy Act*.

**DATED** at Charlottetown, Prince Edward Island, this 2nd day of April, 2025.

(sgd.) Andrew Cudmore

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**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.