

INTRODUCTION

- [1] This decision determines an application filed with the Residential Tenancy Office (the "Rental Office") under the *Residential Tenancy Act* (the "Act").
- [2] The Landlord seeks an order to keep the Tenants' security deposit and to pay rent owing, for a total claim of \$1,540.35.

DISPOSITION

- [3] I find that the Application and Amended Application are denied.

BACKGROUND

- [4] The Unit is a motel room in a multi-unit building.
- [5] On December 1, 2023, the parties entered into a written month-to-month tenancy agreement for the Unit. Rent of \$872.00 was due on the first day of each month, and a security deposit of \$772.00 was paid on November 21, 2023.
- [6] The Landlord served the Tenants an eviction notice for non-payment of rent, and the Tenants moved out of the Unit on April 16, 2024. The Landlord did not provide the Rental Office a copy of the eviction notice.
- [7] On May 2, 2024, the Landlord filed with the Rental Office a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") seeking to keep the security deposit and rent owing.
- [8] On May 10, 2024, the Rental Office emailed the parties notice of a teleconference hearing scheduled for May 30, 2024.
- [9] On May 22, 2024, the Rental Office emailed the Landlord notice that the hearing was being postponed. Neither party submitted any evidence, and the Rental Office was unable to confirm if the contact information the Landlord provided for the Tenants was valid.
- [10] On April 7, 2025, the Landlord filed with the Rental Office an amended *Form 2(B) Landlord Application to Determine Dispute* (the "Amended Application") seeking to keep the security deposit and rent owing.
- [11] On May 1, 2025, the Rental Office emailed the parties notice of a rescheduled teleconference hearing for June 5, 2025.
- [12] On May 28, 2025, the Rental Office telephoned the Tenants and left a voicemail with the details of the teleconference hearing.
- [13] On May 30, 2025, the Rental Office emailed the parties a 22-page PDF (the "Evidence Package").
- [14] On June 5, 2025, neither party called into the teleconference hearing. The teleconference hearing did not proceed on this date.
- [15] On June 12, 2025, the Rental Office emailed the parties notice of a rescheduled teleconference hearing for July 8, 2025.
- [16] On July 8, 2025, the Landlord's representative (the "Representative") participated in a teleconference hearing. I telephoned the Tenants and left a voicemail with the hearing details. The hearing proceeded in the Tenants' absence about ten minutes after the scheduled time. The

Representative confirmed receipt of the Evidence Package and that all documents submitted to the Rental Office were included. The Tenants submitted no documents or evidence.

ISSUE

- A. Did the Landlord properly serve the Tenants the Application and Amended Application?
- B. Do the Tenants owe the Landlord rent, and can the Landlord keep the security deposit?

ANALYSIS

- [17] The Representative stated that the Tenants did not pay the full amount of rent owing from January to April 2024. The Representative stated that he is seeking to keep the security deposit of \$772.00 and for the Tenants to pay the Landlord the outstanding balance of \$1,540.35.
- [18] The Representative stated that he served the Application to the Tenants by email in May 2024. He stated that he got the Tenants' email address from his former property manager, as he could not locate a copy of the tenancy agreement. The Representative stated that he last communicated with the Tenants using that email address on May 2, 2023, after they vacated another property they had rented from the Landlord. He stated that the Tenants did not respond to him after he emailed the Application to that email address.
- [19] The Representative stated that he also emailed the Amended Application to one of the Tenants ("T1") at their workplace on March 19, 2025. He stated that he sent the Amended Application to the general office email of T1's workplace, as he did not have T1's personal work email address. The Representative stated that he also mailed a copy of the Amended Application to T1 at his workplace.
- [20] The Representative stated that he knows where T1 works, because he does business with that company. He stated that neither the Tenants nor the company responded to him after he emailed and mailed the Amended Application.

A. Did the Landlord properly serve the Tenants the Application and Amended Application?

- [21] Subsection 76(2) of the Act states:

A person who makes an application to the Director shall give a copy of the application to the other party in accordance with section 100 within five days of making the application.

- [22] Section 100 of the Act states:

(1) A document that is required or permitted under this Act to be given to or served on a person shall be given or served in one of the following ways:

- (a) giving the document personally to the other party;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) sending the document by registered mail or ordinary mail to the other party at an address provided by the other party;*
- (d) sending the document electronically where*
 - (i) it is provided in the same or substantially the same form as the printed document,*
 - (ii) the other party has provided an electronic address for receipt of documents,*
 - and*
 - (iii) it is sent to that electronic address;*

- (e) where the other party is a corporation, by giving a copy of the document personally to a director, manager or other officer of the corporation or by leaving it at, or sending it to, the registered office of the corporation by a method set out in clause (c) or (d);
- (f) posting the document in a conspicuous place on the entrance of the rental unit;
- (g) by any other means of service prescribed in the regulations.

The Application

- [23] The Representative stated that he served the Application to the Tenants by using an email address that was active on May 2, 2023; however, I note that it was one year prior to the service date of the Application. The Landlord acknowledged that the Tenants had not communicated with him from that email address since May 2, 2023, or confirmed receipt of the Application.
- [24] I am not satisfied that the Landlord has established that the Tenants' previous email address was still active or being used by the Tenants for receipt of documents when the Application was emailed to their previous email address.
- [25] Therefore, I find that the Application was not served to the Tenants within 5 days of filing as required under section 76(2) of the Act.
- [26] The Island Regulatory and Appeals Commission noted in Order LR25-14:

Subsection 76(2) of the Residential Tenancy Act requires that a person who makes an application to the Director "shall give a copy of the application to the other party ... within five days of making the application." The Commission has previously commented on a party's failure to serve their application on the other party within the timeline prescribed by subsection 76(2). In Order LR24-32, the Commission found that the lack of compliance with subsection 76(2) was fatal to the party's application.

- [27] The Landlord made no submissions regarding the end date of the tenancy or when the Unit was re-rented. As the Tenants moved out on April 16, 2024, and the Landlord was only seeking rent up to that date, I find that the tenancy ended on April 16, 2024.

The Amended Application

- [28] The Landlord stated that he emailed and mailed the Amended Application to T1's workplace by ordinary mail; however, he acknowledged that he did not receive confirmation that the Tenants had received a copy of the Amended Application.
- [29] Clauses 100(1)(c) and (d) of the Act state that a document can be given or served on a person if the person has provided an address or electronic address for receipt of the documents.
- [30] I find that there is insufficient evidence that the Tenants provided the Landlord with T1's workplace mailing address or workplace email address, as means by which they could receive documents sent by the Landlord.

Substituted Service

- [31] Subsection 100(2) of the Act states:

Despite subsection (1), a person may apply to the Director for, and the Director may issue, an order authorizing another method of service where, after making reasonable efforts, the person has been unable to effect service of a document under subsection (1).

- [32] I find that there is insufficient evidence that the Landlord applied to the Director for an order authorizing another method of service.

[33] I find that there is insufficient evidence that the Tenants received the Amended Application.

[34] Therefore, I find that the Amended Application was not served to the Tenants within 5 days of filing as required under section 76(2) of the Act.

B. Do the Tenants owe the Landlord rent, and can the Landlord keep the security deposit?

[35] As the Landlord did not serve the Application or Amended Application to the Tenants, I will not make a determination regarding the rent owing or security deposit claims.

[36] However, as the six-month statutory limitation period set out in Section 75 of the Act has expired, the Tenants' right to the return of the security deposit has extinguished.

CONCLUSION

[37] I find that the Application and Amended Application are denied as they were not served to the Tenants within 5 days of filing as required under section 76(2) of the Act.

[38] I find that, as the tenancy ended on April 16, 2024, the six-month statutory limitation period set out in Section 75 of the Act for filing any further applications has expired for both parties.

IT IS THEREFORE ORDERED THAT

1. The Application and Amended Application are denied.

DATED at Charlottetown, Prince Edward Island, this 23rd day of July, 2025.

(sgd.) Mitch King

Mitch King
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.