



Date Issued: November 1, 2023
Docket: LR23083
Type: Rental Appeal

INDEXED AS: Reshmi Sam Abraham v. A&M Rentals

Order No: LR23-61

BETWEEN:

Reshmi Sam Abraham

Appellant

AND:

A&M Rentals

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
M. Douglas Clow, Vice-Chair
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

1. INTRODUCTION

1. This appeal was heard by the Commission on October 10, 2023 and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in determining the distribution of a tenant’s security deposit.

2. BACKGROUND

2. On January 1, 2022, Reshmi Sam Abraham (the “Tenant”) entered into a written rental agreement for the premises located at 175 St. Peter’s Road, Apartment #8, Charlottetown, PE (the “Premises”) with A&M Rentals (the “Landlord”). Rent for the Premises was \$975 per month with a security deposit paid in the amount of \$975.
3. The Tenant vacated the Premises by March 31, 2023.
4. On May 15, 2023 the Tenant filed a Tenant Application (the “Application”) to Determine Dispute (Form 2A) with the Rental Office, requesting return of the security deposit.
5. The Landlord provided a Notice to Retain the Security Deposit dated April 3, 2023 (the “Notice”) wherein the Landlord sought to retain \$725 of the security deposit.
6. The Tenant’s Application was heard by the Rental Office on September 1, 2023. In Order LD23-422, dated September 8, 2023, the Rental Office denied the Tenant’s Application, permitted the Landlord to retain \$720 from the security deposit, and ordered the Landlord to return the balance of the security deposit and accrued interest to the Tenant (an amount of \$258.45).
7. On September 26, 2023, the Tenant filed an appeal with the Commission.
8. On October 10, 2023 the Commission heard the appeal by way of telephone conference hearing. The Tenant participated. The Landlord was represented by Joe Gallant (“Mr. Gallant”).

3. DISPOSITION

9. The appeal is dismissed and the Landlord may retain \$725 from the security deposit. However, the Commission does not agree with the finding of the Residential Tenancy Office that the Landlord is subject to the security deposit provisions in the new *Residential Tenancy Act*, and this Order provides clarified reasoning to that effect.

4. PRELIMINARY ISSUE

10. In Order LD23-422, the Residential Tenancy Officer raised two preliminary issues. The Commission will similarly consider both.

11. First, in Order LD23-422, the Residential Tenancy Officer concluded that this matter falls under the jurisdiction of the current *Residential Tenancy Act*. The Commission does not agree with this conclusion.
12. The evidence from the parties is clear that the tenancy agreement ended by March 31, 2023. The new RTA did not come into force until April 8, 2023. Therefore, at the time the tenant vacated the Premises and the tenancy agreement ended, the former *Rental of Residential Property Act* (“RRPA”) was in force. Despite this, the Residential Tenancy Officer found that the transitional provision at section 110 of the new RTA operated such that the former RRPA no longer applied and the parties were subject to the security deposit provisions in the new RTA.
13. The Commission has previously commented on the applicability of the new RTA and the former RRPA to circumstances where the tenancy agreement ended prior to the new RTA coming into force. Order LR23-56 of the Commission, issued October 6, 2023, concluded that section 110 was not intended to apply where a tenancy agreement ended while the former RRPA was still in force and the parties’ rights and obligations respecting security deposits had already “crystalized”. In other words, in a case such as this where the tenancy agreement between the parties ended *before* the new RTA came into force, the parties remain subject to the security deposit provisions in the former RRPA.
14. Further, in the present case, unlike in Order LR23-56, the Landlord provided a Notice of Intention to Retain Security Deposit (Form 8) dated April 3, 2023 – clearly *before* the new RTA came into force.
15. For these reasons, this appeal will be considered in accordance with the security deposit provisions under the former *Rental of Residential Property Act*.
16. With respect to the second preliminary issue raised in Order LD23-422, the Officer considered whether the Notice of Intention to Retain the Security Deposit (Form 8) was valid. Because the Landlord prepared the Form 8 *before* the new RTA came into force (i.e. *before* the new Form 2B was required), the Commission finds it was appropriate and valid for the Landlord to use the Form 8 that existed and was required at the time it was prepared and provided to the Tenant.

5. ANALYSIS

17. The *Rental of Residential Property Act* (subsection 10(5)) permits a landlord to retain all or part of a security deposit where they believe the tenant is liable to the landlord for a breach of statutory condition 4, being the tenant’s obligation to maintain ordinary cleanliness and repair damage, provided they give notice to the tenant of the intention to retain the security deposit.
18. The onus is on the Landlord, when seeking to retain the security deposit, to establish that the tenant(s) failed to satisfy this obligation.

19. On behalf of the Landlord, at the hearing before the Commission, Mr. Gallant referred to pictures within the file materials during his testimony. The pictures depict mould around windows, window frames and walls below the windows, a dirty stovetop and oven, a broken handle on the refrigerator, a damaged closet door track, a burn mark on the countertop. Mr. Gallant testified that the pictures were taken at the Premises on March 30, 2023 at approximately 2:13 p.m., the day after the Tenant vacated. He stated that the Premises were cleaned after the pictures were taken during the afternoon and evening of March 30, 2023. Mr. Gallant testified that he offered to re-paint the Premises before the new tenants moved in, but they wanted to move in right away.
20. Mr. Gallant alleged that the mould on the window frames and walls resulted from the Tenants leaving the windows open, thereby allowing moisture to get in. Further, Mr. Gallant testified that the countertop was damaged (by a hot pot) to the point that a portion of it needed to be replaced.
21. At the hearing, the Tenant confirmed that they had in fact received a return of \$258.45 of the security deposit by e-transfer, but that the Tenant is seeking the remainder of the security deposit. The Tenant testified that they had cleaned the Premises prior to vacating.
22. Having considered all the evidence, the Commission is satisfied that the Landlord has met their onus to establish that the Tenant failed in their obligation to maintain ordinary cleanliness and repair damage beyond normal wear and tear. The Commission is further satisfied that the amounts claimed, that is to say \$250.00 for cleaning and \$475.00 for the material used to replace the kitchen countertop, were reasonable and justified. The pictures show a rental unit that is unclean beyond the standard of ordinary wear and tear, as well as damage in need of repair.

6. CONCLUSION

23. The appeal is dismissed and the Landlord may retain \$725 from the security deposit.

IT IS ORDERED THAT

- 1. The appeal is dismissed.**
- 2. The end result of Order LD23-422 is confirmed.**
- 3. The Landlord may retain \$725.00 from the security deposit.**
- 4. The Landlord shall return \$258.45 from the security deposit to the Tenant. If the Landlord previously repaid any or all of this amount to the Tenant, that payment can be offset against the total amount owed to the Tenant.**

DATED at Charlottetown, Prince Edward Island, Wednesday, November 1, 2023.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commission

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Murray MacPherson)

Murray MacPherson, Commissioner

NOTICE

Subsections 26(2), 26(3), 26(4) and 26(5) of the *Rental of Residential Property Act* provides as follows:

26. (2) A lessor or lessee may, within fifteen days of the decision of the Commission, appeal to the court on a question of law only.

(3) The rules of court governing appeals apply to an appeal under subsection (2).

(4) Where the Commission has confirmed, reversed, or varied an order of the Director and no appeal has been taken within the time specified in subsection (2), the lessor or lessee may file the order in the court.

(5) Where an order is filed pursuant to subsection (4), it may be enforced as if it were an order of the court.