



Amended: October 2, 2024
Date Issued: September 26, 2024
Dockets: LR24054
Type: Rental Appeal

INDEXED AS: AS5 Holdings Inc. v. Akanksha Sharma and Gurtej Kaur
Order No: LR24-58A

BETWEEN:

AS5 Holdings Inc. (the "Landlord")

Appellant

AND:

Akanksha Sharma and Gurtej Kaur (the "Tenants")

Respondents

ORDER

Panel Members:

M. Douglas Clow, Acting Chair
Cynthia McCardle, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on September 4, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord must pay the Tenants double the security deposit plus interest on the principal amount, totaling \$2,542.67.

B. BACKGROUND

2. On June 3, 2024, the Tenants filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Tenant Application”) with the Residential Tenancy Office (the “Rental Office”), requesting a return of the of the security deposit. A copy was emailed to the Landlord on June 1, 2024.
3. On June 11, 2024, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “Landlord Application”) with the Rental Office seeking compensation for unpaid utilities and cleaning. A copy was emailed to the Tenants in June 13, 2024.
4. On July 16, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenants, a Tenant witness, a Landlord representative (the “Representative”), and a Landlord witness participated in the hearing.
5. Order LD24-242 was issued by the Residential Tenancy Office on July 31, 2024, which ordered that the Landlord must pay the Tenants double the security deposit plus interest on the principal amount, totaling \$2,542.67.
6. The Landlord appealed Order LD24-242 on August 5, 2024.
7. The Commission heard the appeal on September 4, 2024, by way of telephone conference call. Amar Jamal Khawaja attended the hearing on behalf of the Landlord, AS5 Holdings Inc. The Tenants, Akanksha Sharma and Gurtej Kaur, attended the teleconference hearing. Navneet Singh testified on behalf of the Tenants.

C. DISPOSITION

8. The appeal is dismissed and Order LD24-242 is confirmed, subject to an updating of the interest payable for the security deposit.

D. SUMMARY OF EVIDENCE

9. The Landlord testified that he provided the Tenants a furnished rental unit for the price of an unfurnished unit. The tenancy agreement included heat and electricity in the rent but was subject to a \$100 per month cap for heat plus a \$100 per month cap for electricity. He submitted that the rent was initially to be \$1500 per month and the security deposit was also \$1500. He submitted that the Tenants had bargained the rent down to \$1250 per month. He testified that he credited the excess security deposit funds, in the amount of \$250.00, to the Tenants so the Tenants just paid \$1000.00 for rent on April 1, 2024. After the Tenants moved out, he noticed that there was mold, broken curtains and spots

on the couch and mattress. There were seven units in the building but he calculated heat and electricity based on 14 spaces as the size of the units varied. He explained his system for apportioning and calculating heat and electricity charges over the monthly cap. He testified that he routinely told the Tenants to be careful about the heat and to avoid opening windows in cold weather. He stated that he told the tenants verbally on several occasions that the heat and electricity charges would be calculated at the end of the lease. He stated that he explained the calculation system and provided invoices to the Tenants on May 9, 2024.

10. The Tenants testified that since rent was paid on a monthly basis it was their understanding that heat and electricity costs exceeding the monthly cap would have been calculated monthly, brought to the attention of all tenants monthly and then paid monthly. The Tenants testified that the security deposit exceeded one month's rent contrary to the *Residential Tenancy Act* (the "Act"). The Tenants acknowledge that the Landlord eventually credited the excess security deposit of \$250.00 to them and thus they paid \$1000.00 rent, rather than \$1250.00, for their last rent payment on April 1, 2024. They submit that the video evidence shows the unit to be clean and tidy. The Tenants stated that there was a camera with audio installed in front of their unit in the common area. The Tenants stated that when they moved out of their rental unit the Landlord did not return their security deposit. They testified that they needed to open the window when they were cooking.
11. Navneet Singh testified that he was a tenant in one of the other units in the same building. He testified that the Landlord told him that he would not pay an electrician for a non-working device in the kitchen. Mr. Singh testified that the Landlord was not transparent about the electricity bills.

E. ANALYSIS

12. In the present appeal there is a written tenancy agreement dated May 5, 2023 (Exhibit E-7). The Commission has carefully reviewed this agreement. It is important to recognize that the unit is not a fully independent residential unit with its own electricity meter and furnace. Electricity and heat are shared among seven units as there is one electric meter and one furnace. The agreement included the following clause:

Utilities and Other Charges

28. The Landlord is responsible for the payment of the following utilities to the Property: electricity, water/sewer, internet, heating oil/propane and garbage collection (city services). Heating (heating oil/propane) cost to be capped at \$100/month and electricity bill also capped at \$100/month. Therefore, the total cost of electricity and heating (heating oil/propane) bill should not be more than \$200/month.

13. No mention was made in the agreement as to how expenses incurred over the heating and electricity caps would be calculated and apportioned among the various tenants or when payment for any expenses exceeding the caps were to be paid. However, reading clause 28 in context with the whole tenancy agreement, the Commission finds that a logical interpretation, in the absence of specific details, would be that the Tenants expected the Landlord to review the cost of electricity and heat monthly and bring any

specific excess cost to the attention of the Tenants, and indeed all tenants in the building, in the event the Landlord chose to seek payment for the overage. In any event, the tenancy agreement does not state that excess costs would be recovered at the end of the tenancy.

14. Attempting to apportion the expense of utilities for multiple units where there is a common furnace and a common electrical meter is problematic at best. The Commission finds that, in order for the Landlord to recover costs in excess of the cap, the tenancy agreement must address how such costs would be apportioned among the various tenants in various units and when these costs would be payable. Such details must be complete, comprehensible and written in the tenancy agreement. That way, tenants are at least fully aware of the terms and may accept (or reject) the terms before signing the tenancy agreement. Here the tenancy agreement was silent on these matters but as the caps were stated to be monthly caps it was reasonable for the Tenants to infer that any overage would be sought and payable on a monthly basis. The Tenants then believed that the caps were not exceeded when the Landlord did not seek additional payment each month and were caught by surprise when the Landlord sought a large cumulative total at the end of the tenancy along with finally revealing his scheme of apportionment. Accordingly, the Commission will not accept the Landlord's claim against the Tenants for expenses exceeding the monthly caps.
15. The Commission agrees with the finding in Order LD24-242 that the Landlord was not in compliance with section 40 of the Act and accordingly the Landlord is required to pay the Tenants double the amount of the security deposit pursuant to subsection 40(4) of the Act.
16. Pursuant to clause 14(3)(b) of the Act, a landlord shall not require or accept a security deposit greater than the equivalent of one month's rent. Both parties testified that the extra security deposit funds in breach of clause 14(3)(b) were credited to the Tenants on April 1, 2024. As the Landlord did not credit the excess \$250.00 of the security deposit until April 1, 2024, the interest payable on the security deposit is based on \$1500.00 from May 3, 2023 to April 1, 2024. The remaining interest from April 2, 2024 to the date of the Commission's Order is based on the lawful security deposit of \$1,250.00.
17. The Commission has carefully reviewed the reasoning set out in Order LD24-242 and agrees with the analysis and reasoning set out in that Order.
18. For the above reasons, the Commission dismisses the appeal and confirms Order LD24-242, subject to an updating of the calculation of interest on the security deposit.

F. CONCLUSION

19. The appeal is dismissed. Order LD24-242 is confirmed. The Landlord shall return double the security deposit together with interest on the security deposit funds paid by the Tenants to the Landlord.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD24-242 is confirmed, subject to an updating of the interest calculation on the security deposit.
3. The Landlord must pay the following Total Sum to the Tenants within 15 days of the date of this Order, calculated as follows:

Security deposit	\$1250.00
Interest on \$1500.00 (May 3, 2023 to April 1, 2024)	\$33.45
Interest on \$1250.00 (April 2, 2024 to July 31, 2024)	\$9.22
Interest on \$1250.00 (August 1, 2024 to date of this Order)	\$4.30
Double the security deposit	\$1,250.00
Total Sum	\$2,546.97

DATED at Charlottetown, Prince Edward Island, 2nd day of October, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Acting Chair

(sgd. Cynthia McCardle)

Cynthia McCardle, Commissioner

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.