

Order of the Director
File Number: 202500777

Address of Rental Unit: [REDACTED]
Pictou NS [REDACTED]

Applicant: [REDACTED] (Tenant)
Address: [REDACTED]
Pictou NS [REDACTED]

Respondent: [REDACTED]
[REDACTED] (Landlord)
Address: [REDACTED]
Pictou NS [REDACTED]

Value of Application to Director: \$0.00
Date of Application(s): 26-FEB-2025

Summary of Issue:

This is a claim/counterclaim by the tenant and landlord respectively.

The matter proceeded as a telephone conference.

The landlord, [REDACTED], was represented by [REDACTED].

The tenant, [REDACTED], participated.

Upon review of all the evidence and materials submitted to the Officer Jason Warham, on 26-MAR-2025, and,

Based on the following reasons:

1. The tenant began residing in the unit sometimes on August 15, 2023. The initial lease was fixed beginning August 15 and ending August 15, 2024. Monthly rent was payable on the 15th of the month at \$2500.00. Both parties noted on their respective applications that the security deposit is \$2500.00.
2. The tenant raises an issue concerning the amount of the security deposit seeking 50% of it returned and, in addition, disputes a rent increase alleging it to be in violation of the 5% rent cap. The landlord seeks to end the tenancy alleging that the property was not technically a rental and alleges damages, refusing to pay bills and obstruction by the tenant and, in addition, February and March rent have gone unpaid and only \$1700 paid for April. It was confirmed during the hearing that the landlord was only pursuing unpaid rent and was not seeking a variety of charges that was uploaded days before the hearing.

3. Both parties agreed at the outset that the tenancy will terminate end of the day April 15, 2025. All that remains is the compensatory claims. The tenant admitted that she did not pay February and March rent in full and paid only \$1750 in March. She also claims that should make things square with the landlord due to the over payments she says she has made.

4. The lease was provided. It is titled "Residential Lease Agreement with Option to Purchase". This option to purchase contains no terms concerning the option to purchase. In fact, the tenant provided a text message from July 2023 where she advised the landlord she was not interested in ownership but was simply looking to lease. This likely explains why the non-standard lease contains no such provisions concerning the option as there was none.

Security Deposit

5. The tenant paid a deposit of \$2500.00. The Act states that a deposit can be no more than 50% of the rent. The lease states the following: "The Security Deposit is \$2500.00". The tenant is entitled to the return of \$1250.00 of the deposit.

Rent Increase

6. The tenant began residing in the unit on a fixed term lease in August 2023. She continued living in the unit beyond the end date in 2024 but the rent was raised to \$3000 a month starting August 15, 2024. This was done presumably by agreement as the landlord had intentions of creating 2 units. He argues he did not create the 2 units due to the tenant staying and paying more.

7. The rent cap limit rental increases to 5%. It applies to tenants who are in fixed term leases and then continue living in a unit. There are no exceptions. The landlord argued the tenant agreed to it. If the landlord's argument holds true then the rent cap would be rendered meaningless. None of the landlord's arguments creates a waiver of the rent cap.

8. This leads to the conclusion that the tenant has been paying an illegal rent increase from August 15, 2024 onward. The tenant provided a ledger outlying payments. She shows what would be a proper rent increase of \$2625 beginning August 15, 2024 with over payments of \$375 from August 24 to January 25. The tenant stopped paying rent in February to reflect the over payments.

9. The landlord is entitled to rent from February 15 to March 15 of \$2625 plus rent from March 15 to April 15 of \$2625 less over payments from August to Jan of \$2250 less \$1750 payment in March less \$1250 from the overpayment of the deposit leaving a zero balance owing.

Conclusion

10. There is nothing outstanding. As agreed upon, the tenancy will terminate end of the day April 15, 2025. The tenant will be entitled to the award of the application fee.

Having reviewed all of the evidence, it is Ordered that:

Rent was \$2625 beginning August 15, 2024.

There is no rent currently outstanding.

The landlord, [REDACTED], shall pay to the tenant, [REDACTED], the sum of \$31.15.

IT IS FURTHER ORDERED THAT the tenancy terminates effective end of the day April 15, 2025 at which time the tenant and any occupants will provide vacant possession of the unit at [REDACTED], Pictou, NS., to the landlord on that date.

Signed: _____

Jason Warnham,
Residential Tenancy
Officer

Date: 08-APR-2025

An Appeal may be filed within ten (10) days of the date of this Order at the Small Claims Court for your area. If no appeal is filed, this Order may be made an Order of the Small Claims Court.