

Introduction

- [1] On February 19, 2024 the Tenants filed a *Tenant Application to Determine Dispute (Form 2(A))* with the Residential Tenancy Office (the "Rental Office") seeking a monetary order for an unlawful rent increase and for return of security deposit overpayment (the "Tenants' Application").
- [2] On March 11, 2024 the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* with the Rental Office seeking to retain part of the security deposit (the "Landlord's Application"). The Landlord returned \$355.00 of the security deposit funds to the Tenants on this date.
- [3] The Tenants' Application and the Landlord's Application are referred to collectively in this decision as the "Applications."
- [4] On March 22, 2024 the Rental Office mailed and emailed the parties the Applications and notice of a teleconference hearing scheduled for 9:00 a.m. on April 23, 2024.
- [5] On April 19, 2024 the Rental Office emailed an 82-page evidence package to the parties (the "Evidence Package" or "EP").
- [6] On April 22, 2024 the Rental Office sent additional emails to the Landlord providing access to the Evidence Package via TitanFile.
- [7] On April 23, 2024 the Residential Tenancy Officer (the "Officer"), the Tenants, the Tenants' witness and the Landlord's representative (the "Representative") participated in a teleconference hearing for determination of the Applications. The Landlord was permitted to submit additional documents after the hearing regarding the Tenants' claim of an unlawful rent increase.

Issues to be Decided

- i. Has the Landlord established valid claims against the security deposit for cleaning and damage?
- ii. Did the Landlord charge the Tenants an unlawful rent and security deposit?

Summary of the Evidence

- [8] The Unit is a two-bedroom, two-bathroom apartment that was constructed approximately two years ago. The Unit is located in a 97-unit building (the "Residential Property").
- [9] The Landlord and the Tenants entered into a written, fixed term tenancy agreement for the period of July 3, 2023 to July 2, 2024. Rent in the amount of \$1,695.00 was due on the first day of the month. A security deposit of \$1,695.00 was paid between March 20 and 26, 2023.
- [10] The rent includes payments for the following services and facilities: water, cooking stove, refrigerator, washer, dryer, janitorial service for common areas, parking (one surface parking space), snow removal for parking lot and walkways and grass cutting.
- [11] On February 6, 2024 the Tenants emailed the Landlord a *Tenant Notice of Termination (Form 3)* with an effective date of February 25, 2024.
- [12] On February 25, 2024 the Tenants vacated the Unit.

Landlord's Evidence and Submissions

(1) Security Deposit Claims

- [13] The Landlord's evidence is summarized as follows.
- [14] The Tenants did not contact the Landlord shortly before move-in, as admitted in a July 3, 2023 email from the Tenants (EP 56)
- [15] The Representative stated that the Tenants left the Unit in an unclean condition at the time that they moved out. The Landlord submitted into evidence 19 photographs of the Unit that were taken shortly after the Tenants moved out. The Landlord submitted into evidence a cleaning invoice dated March 6, 2024 in the amount of \$400.00 (EP 61) which states in part:
- "3 separate visits to complete -Deep clean all surface areas, doors, baseboards, appliances, bathrooms (2), walls, windows, closets"*
- [16] The Landlord submitted into evidence a *Landlord Condition Inspection Report (Mandatory) (Form 5)* dated July 3, 2023 (EP 57; the "Inspection Report"). The Representative submits that the Inspection Report was completed to identify damage to the Unit, not uncleanliness. The body of the Inspection Report is blank, which indicates that the Unit was undamaged at the time the Tenants moved into the Unit. The Landlord claims \$700.00 for the labour cost of repairing and repainting damage and \$240.00 for the materials cost.
- [17] The Tenants had a dog at the Unit in violation of the tenancy agreement, which includes specific terms regarding pets (EP 31 to 36; clauses 4.0 to 4.16). The Representative submits that the Tenants' dog is responsible for part of the cleaning and damage claims.
- [18] With regard to the Tenants' July 9, 2023 email requesting repairs of scuffs on the walls (EP 49), the Representative is not aware of repairs being completed by the Landlord during the tenancy.

(2) Unlawful Rent and Security Deposit

- [19] The construction of the Residential Property was impacted by the COVID-19 Pandemic. Rental units of the Residential Property were completed and became available for rent at various dates.
- [20] The Landlord did not make an application to the Rental Office for a rent increase for the Unit.
- [21] On April 26, 2024, the Representative emailed the Rental Office stating in part as follows:

"...we have experienced turnover of staff and I have been unable to locate the prior lease for [the Unit]. We accept the copy that has been presented in the evidence package as being truthful and thus will reimburse the tenant for the difference in rent accordingly."

Tenants' Evidence and Submissions

(1) Security Deposit Claims

- [22] The Tenants' evidence is summarized as follows.
- [23] On July 3, 2023, at the time the Tenants moved in, the Unit was filthy. The countertops were sticky, there was cat hair everywhere, and Q-tips were hidden under the radiator. The Landlord credited the Tenants \$150.00 for August 2023 rent due to the uncleanliness of the Unit.

- [24] The Tenants admit that they were unable to fully clean the Unit before they moved out on February 25, 2024. The Tenants admit responsibility for \$200.00 of the cleaning cost of the Unit.
- [25] The Tenants dispute the remaining \$200.00 balance of the cleaning claim because the Unit was not clean at the time the Tenants moved in. The Tenants completed vacuuming and steam mop cleaning prior to moving out. The Tenants submit that the cleaning invoice dated March 6, 2024 submitted into evidence by the Landlord (EP 61) does not provide details of the work that was completed.
- [26] On July 3, 2023 the Tenants completed the Inspection Report with T.A., a different representative of the Landlord. The Tenants were directed by T.A. to note on the Inspection Report if any of the services or appliances were not working. T.A. indicated to the Tenants that the scuff marks would be addressed and therefore the damage was not noted on the Inspection Report.
- [27] On July 9, 2023 the Tenants sent the Landlord an email requesting repairs of scuffs on the walls (EP 49). However, the Landlord did not repair the scuffs during the tenancy. The Tenants stated that it is possible that one or two scuffs on a door was caused by the Tenants.
- [28] The Tenants deny that their dog damaged the Unit.
- [29] The Tenants' witness stated that on July 3, 2023 the Unit was unclean, smelled of cats, and had scuff marks on the walls.

(2) Unlawful Rent and Security Deposit

- [30] The Tenants paid prorated July 2023 rent, in the amount of \$1,585.65. The Tenants paid discounted August 2023 rent, in the amount of \$1,545.00, due to the uncleanliness of the Unit at the time of move in. The Tenants paid \$1,695.00 per month in rent from September 2023 to February 2024.
- [31] The Tenants obtained three-pages of a tenancy agreement from the former tenants of the Unit (the "Former Agreement"), which was for the fixed term of June 1, 2022 to May 31, 2023. The Former Agreement had a monthly rent of \$1,440.00 for the same included services. The former tenants also had an underground parking spot, at an additional cost of \$140.00 per month, for a total monthly rent of \$1,580.00.
- [32] The Tenants paid a \$1,695.00 security deposit, being \$255.00 in excess of the monthly rent in the Former Agreement.

Analysis

(1) Security Deposit

- [33] Clause 39(2)(a) of the *Residential Tenancy Act* (the "Act") states:

When a tenant vacates a rental unit, the tenant shall

(a) leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear...

- [34] The photographs of the Unit submitted into evidence by the Landlord show that the Unit was not in a reasonably clean state at the end of the tenancy. The Tenants have admitted responsibility for \$200.00 of the cost of cleaning the Unit.

- [35] The evidence presented by the parties does not support a claim in excess of the \$200.00 admitted by the Tenants. The cleanliness standard mandated by the *Act* is “reasonably clean.” The deep cleaning description in the March 6, 2024 invoice indicates cleaning to move-in ready condition, which is a higher standard than “reasonably clean.”
- [36] The evidence presented establishes that the Unit was unclean at the time the Tenants moved in on July 3, 2023. The Officer cannot conclude that the cleanliness of the Unit at the beginning of the tenancy was better than the condition of the Unit at the end of the tenancy. In these circumstances, it would be inconsistent to award a \$400.00 claim for cleaning when in August 2023 the Landlord only compensated the Tenants with \$150.00 for cleaning.
- [37] With regard to the damage alleged by the Landlord, the Tenants and their witness provided direct evidence that the Unit had pre-existing damage. The July 9, 2023 email from the Tenants to the Landlord, sent only six-days after the Tenants’ move-in date, specifically requests that the Landlord repair scuffs on the walls. The evidence establishes that scuff repairs were not completed during the tenancy.
- [38] Although the Tenants stated that one or two scuffs on a door may be their responsibility, such a limited amount of damage would be reasonable wear and tear.
- [39] The Representative stated that the Tenants’ dog may be responsible for damage to the Unit. However, the Landlord’s photographs do not show damage that would normally be attributable to a dog. Although the Landlord has provided evidence of non-compliance by the Tenants regarding the pet restrictions in the tenancy agreement, the Landlord has not established a connected financial loss.
- [40] With regard to the blank Inspection Report, the Officer is unable to infer that the Unit was undamaged as of July 3, 2023. The Tenants’ evidence establishes that the Inspection Report was used to address any issues with the services and appliances. T.A., the representative of the Landlord that completed the Inspection Report, did not appear as a witness at the hearing and provide testimony.
- [41] For the reasons above, the Officer finds that the Landlord has not established that the Tenants damaged the Unit.
- [42] The total deduction established against the security deposit is \$200.00 for cleaning. The security deposit funds to be returned to the Tenants are calculated below, which includes the security deposit overpayment above the lawful amount.

(2) Unlawful Rent Increase

- [43] Part 3 of the *Act* (sections 47 to 50) sets out the rules regarding rent increases.
- [44] The Officer notes that on Prince Edward Island rent runs with the rental unit and not the tenant (section 47). This means that when a tenant moves out of a rental unit a landlord cannot automatically increase the rent for the unit and must instead comply with the rent increase rules in Part 3.
- [45] Prince Edward Island’s 2023 rent increase limit without a Rental Office application was 0%. The evidence establishes that the Landlord did not make an application to the Rental Office for the \$255.00 rent increase from \$1,440.00 to \$1,695.00. The Officer finds that the Landlord must return to the Tenants the difference between the rents, as calculated below.

Conclusion

[46] The Landlord's Application for a claim against the security deposit is allowed in part, in the amount of \$200.00. The \$1,185.58 balance of the security deposit that must be returned by the Landlord to the Tenants is calculated as follows:

Item	Amount
Security deposit	\$1,695.00
Interest on \$1,695.00 (23 MAR 2023 to 10 MAR 2024)	\$40.27
Interest on \$1,340.00 (11 MAR 2024 to 1 May 2024)	\$5.31
Security deposit returned on 11 MAR 2024	-\$355.00
Deduction for cleaning	-\$200.00
Security Deposit Balance	\$1,185.58

[47] The Tenants have established a return of rent claim based upon an unlawful rent increase in the amount of \$2,023.55 [7 months multiplied by \$255.00 (\$1,785.00) plus prorated July 2023 rent increase of \$238.55].

[48] The total amount to be paid by the Landlord to the Tenants is \$3,209.13 (\$1,185.58 plus \$2,023.55).

[49] The lawful rent for the Unit is stated below.

IT IS THEREFORE ORDERED THAT

1. The Landlord will retain \$200.00 of the Tenants' security deposit.
2. The Landlord will pay the Tenants \$3,209.13 by May 21, 2024.
3. Except for rent increases authorized by the *Act*, the lawful monthly rent for the Unit is \$1,440.00, which includes payments for the following services and facilities: water, cooking stove, refrigerator, washer, dryer, janitorial service for common areas, parking (one surface parking space), snow removal for parking lot and walkways and grass cutting.

DATED at Charlottetown, Prince Edward Island, this 1st day of May, 2024.

(sgd.) Andrew Cudmore

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.