

Introduction

- [1] On March 18, 2024 the Tenants filed a *Tenant Application to Determine Dispute (Form 2(A))* (the “Tenants’ Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for double the security deposit.
- [2] On March 26, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 9:00 a.m. on April 16, 2024.
- [3] On April 12, 2024 the Rental Office emailed the parties an evidence package (“Evidence Package” or “EP”). The Tenants and the Landlord had submitted evidence to the Rental Office. The Evidence Package included the first page of an unfiled *Landlord Application to Determine Dispute (Form 2(B))* submitted by the Landlord.
- [4] At 8:52 a.m. on April 16, 2024 the Landlord emailed the Rental Office the complete, two-page *Landlord Application to Determine Dispute (Form 2(B))* dated March 3 (the “Landlord’s Application”).
- [5] At 9:00 a.m. on April 16, 2024 the Tenants and the Landlord participated in a teleconference hearing before the Residential Tenancy Officer (the “Officer”). The Tenants advised the Officer that they had received the first page of the Landlord’s Application (unfiled) in the Evidence Package but not the second page. During the hearing the Rental Office emailed the parties both pages of the filed Landlord’s Application.
- [6] At the hearing the Officer advised the parties that the Tenants’ Application and the Landlord’s Application address related matters that should be heard together. The parties agreed to a revised evidence submission deadline of 4:00 p.m. on April 19, 2024 and an adjourned hearing date of 9:00 a.m. on April 24, 2024. The Rental Office emailed the parties a rescheduled notice of hearing.
- [7] On April 22, 2024 the Rental Office emailed the parties a supplementary evidence package (“Supplementary Evidence Package” or “SEP”).
- [8] On April 24, 2024 the Tenants and the Landlord participated in a teleconference hearing before the Officer. At the hearing the parties confirmed receipt of the Evidence Package and the Supplementary Evidence Package.

Preliminary Matters

- [9] At the hearing on April 24, 2024 the parties made arrangements for any personal property left behind by the Tenants to be collected by the Tenants on April 25, 2024. The Tenants stated that nothing of value was left behind at the Unit.
- [10] The Officer notes that, with regard to photographic evidence, the best practice is to date stamp each photograph at the time it is taken.

Issues to be Decided

- i. Must the Landlord pay double the security deposit to the Tenants?
- ii. Has the Landlord established valid claims for rent owing, cleaning and damage against the Tenants?

Summary of the Evidence

- [11] The Unit is a one-bedroom, one-bathroom single family dwelling that the Landlord has owned for 29 years.

- [12] The Landlord and the Tenants originally entered into a written, fixed term tenancy agreement for the Unit for the period of June 1, 2020 to June 1, 2021. Rent in the amount of \$1,100.00 was due on the first day of the month. The monthly rent was later reduced to \$1,000.00. The tenancy agreement states that a \$1,100.00 security deposit is to be paid in two payments of \$550.00.
- [13] The parties provided evidence regarding a later written tenancy agreement from November of 2022. However, neither party submitted a copy of the later tenancy agreement into evidence.
- [14] The tenancy continued until February of 2024.

Landlord's Evidence and Submissions

- [15] The Landlord's evidence is summarized as follows.
- [16] With regard to the security deposit amount paid by the Tenants, on April 9, 2024 the Landlord emailed the Rental Office (EP 34) stating in part as follows:
- "The damage deposit is only 500 not 1000 like rent..."*
- [17] At the April 16, 2024 hearing the Landlord contested that the Tenants had paid the full \$1,100.00 security deposit. At the April 24, 2024 hearing the Landlord admitted that the full \$1,100.00 security deposit was in fact paid.
- [18] All rent payments by the Tenants were made by e-transfer to the Landlord, which were automatically deposited into her bank account. The Tenants did not make rent payments by cheque or cash. The Landlord does not have a practice of recording in a spreadsheet rent payment dates and amounts as they occur. The Landlord and the Tenants did not have any earlier Rental Office applications or hearings regarding the Unit.
- [19] The Landlord submitted into evidence CIBC bank records regarding payments by the Tenants in 2021, 2022 and 2023 (EP 105 to 108).
- [20] The Landlord stated that the Tenants were responsible for a flood that occurred in the Unit's basement in November of 2023. The Landlord stated that the Tenants left the Unit and did not maintain a temperature of 65° F even though heat is included in the tenancy agreement.
- [21] The Landlord has been inhibited from re-renting the Unit due to the flood damage and other damage caused by the Tenants. The Landlord has claimed against the Tenants for rent owing in the amount of \$1,100.00 per month for March and April of 2024.
- [22] The Landlord provided evidence regarding other damage claimed against the Tenants. The Landlord submitted into evidence an inspection report which states that the date the report was completed and the date the tenancy terminated was February 29, 2023 (EP 36 and 37).

Tenants' Evidence and Submissions

- [23] The Tenants' evidence is summarized as follows.
- [24] The Tenants paid the \$1,100.00 security deposit in two installments. On May 30, 2020 the Tenants made a \$550.00 payment to the Landlord from an Evangeline Credit Union account (EP 13). On July 4, 2020 the Tenants made a second \$550.00 payment to the Landlord from a Tangerine bank account (EP 12).
- [25] The Tenants dispute that any rent is owed to the Landlord. The Tenants submitted documentary evidence showing part of the rent payments that they made (SEP 3 to 11).

- [26] The Tenants submit that the Landlord's behaviour is inconsistent with her rent owing claim. If the Landlord believed that rent was outstanding from 2022 then the Tenants would have expected the Landlord to make an earlier claim for rent owing.
- [27] The Tenants submitted into evidence text message correspondence with the Landlord on January 15, 2024 providing notice that they would be moving out of the Unit (EP 14).
- [28] The Tenants deny that they caused the damage alleged by the Landlord. The Unit had pre-existing damage when the Tenants moved in. The former tenant of the Unit had a dog. The Landlord did not renovate the Unit during the period between the date the former tenant moved out and the date the Tenants moved in.
- [29] The Tenants disputed that the basement flood occurred in November of 2023. The Tenants stated that the flood occurred in February of 2022 and the Tenants were at the Unit when the flood occurred. The Tenants had the heat set to approximately 72° F. The flood was caused due to deficiencies in the Unit and not the Tenants' neglect.
- [30] The Landlord submitted into evidence photographs of the Unit taken before the Tenants had finished moving out and taken without the Tenants' knowledge.
- [31] The Tenants submitted text message correspondence with the Landlord from March 3, 2024 which states in part as follows (EP 25 and 26):

Landlord

*"You sure cleaned it up niceeeeeee
Thankyou I am sure my new renter will appreciate all you did to have it ready and I appreciate it so much
xo"*

Tenants

"Well I know I'd like to move into a nice clean house and not have to worry about cleaning before settling in."

Analysis

Double Security Deposit

- [32] Subsection 40(1) of the *Residential Tenancy Act* (the "Act") provides the 15-day deadline for a landlord to file a claim with the Rental Office or return a tenant's security deposit:

Except as provided in subsection (2) or (3), within 15 days after the date the tenancy ends or is assigned, the landlord shall either

(a) issue payment, as provided in subsection (5), of any security deposit to the tenant with interest calculated in accordance with the regulations; or

(b) make an application to the Director under section 75 claiming against the security deposit.

- [33] Subsection 40(4) provides that a landlord must pay a tenant double the security deposit when the Landlord has not complied with section 40.
- [34] The evidence establishes that the tenancy ended on or about February 29, 2024 pursuant to the text message notice sent by the Tenants to the Landlord on January 15, 2024. The Landlord had

until March 15, 2024 to file an application with the Rental Office seeking to retain the security deposit. The Landlord's Application was not filed until April 16, 2024.

- [35] As the Landlord did not comply with section 40 of the *Act*, the Landlord must pay the Tenants double the security deposit plus interest on the original security deposit, as calculated below.

Rent Owing

- [36] Generally speaking, evidence decays over time. Witnesses have more difficulty accurately recalling events the further back the events occurred. The best practice is for landlords and tenants to bring forward claims in a timely manner.
- [37] The Officer notes that the Landlord's position regarding the security deposit payments has changed. The Landlord previously claimed that the Tenants paid only \$500.00 of the security deposit funds. The Landlord later admitted that the full \$1,100.00 security deposit was in fact paid. This change in evidence puts into question the reliability of the Landlord's evidence regarding rent payments by the Tenants.
- [38] The Tenants have provided documentary evidence showing payments conflicting with the amounts claimed in the Landlord's Application. Any uncertainty regarding rent owing could have been avoided had the Landlord maintained a contemporaneous rent ledger, recording the dates and times of the Tenants' rent payments as they occurred.
- [39] The Officer does not have reliable evidence upon which to find that the Tenants owe rent to the Landlord. As the Landlord has the burden of proof to establish that rent is in fact owing by the Tenants, the Landlord's rent owing claims are denied.

Damage and Cleaning

- [40] The parties provided incompatible evidence regarding the basement flood in the Unit. The parties provided limited documentary evidence to corroborate what in fact caused the basement to flood. Based upon the evidence presented, the Officer cannot conclude what caused the basement to flood. Therefore, the Landlord's flood damage claim is denied.
- [41] The Tenants' evidence puts into question the condition of the Unit at the beginning of the tenancy agreement. Although there are some photographs near the end of the tenancy, it does not appear that there are any photographs of the Unit showing the condition at the beginning of the tenancy.
- [42] The condition inspection report indicates that it was not completed until the end of the tenancy. There appears to be a typo in the document regarding the year it was completed, being 2024 instead of 2023.
- [43] The tenancy between the parties lasted almost four years. Therefore, the amount of damage that would be considered reasonable wear and tear is much broader than a tenancy that lasted for a brief period.
- [44] The Landlord's text message on March 3, 2024 (EP 25 and 26) indicated that the Landlord took no issue with the condition of the Unit. This correspondence is inconsistent with the Landlord's damage and cleaning claims.
- [45] For the reasons above, the Landlord's damage and cleaning claims are denied.
- [46] As a result, the Landlord's rent owing claim after February 29, 2024, which is based upon damage to the Unit, is also denied.

[47] Further, after February 29, 2024 the Tenants could not be considered overholding tenants as contemplated in section 74 of the *Act*. The Landlord cannot rely on this section for compensation (see Commission Order LR20-23 regarding analysis of a similar provision of the *Rental of Residential Property Act*, RSPEI 1988, R-13.1).

Conclusion

[48] The Tenants' Application is allowed and the Landlord's Application is denied.

[49] The Tenants are awarded double the security deposit plus interest on the original security deposit, in the amount of \$2,244.52, calculated as follows:

Item	Amount
Security Deposit	\$1,100.00
Interest (\$550.00; 30 MAY 2020 to 3 JUL 2020)	\$0.51
Interest (\$1,100.00; 4 JUL 2020 to 2 MAY 2024)	\$44.01
Security Deposit (Double Awarded)	\$1,100.00
Total	\$2,244.52

[50] The Tenants are not responsible for any further rent payments to the Landlord for any periods before or after February 29, 2024.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenants \$2,244.52 by May 22, 2024.
2. The Tenants are not responsible for any further rent payments to the Landlord for any periods before or after February 29, 2024.

DATED at Charlottetown, Prince Edward Island, this 2nd 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.