INTRODUCTION

[1] On March 21, 2024 the Tenants filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for double the security deposit.

[2] On April 10, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on April 25, 2024.

[3] On April 22, 2024 the Rental Office emailed the parties an evidence package.

[4] On April 25, 2024 the Tenants and the Landlord participated in a teleconference hearing before the Residential Tenancy Officer (the “Officer”) for determination of the Application.

ISSUES

i. Did the Tenants have a valid basis for ending the tenancy?

ii. Can the Landlord make automatic deductions from the security deposit based upon the terms of the tenancy agreement?

iii. Must the Landlord pay double the security deposit to the Tenants?

SUMMARY OF THE EVIDENCE

[5] The Unit is a two-bedroom, one-bathroom apartment located in a four-unit building (the “Residential Property”) that the Landlord has owned for 12 years.

[6] The Landlord and the Tenants entered into a written, fixed term tenancy agreement for the period of February 1, 2024 to January 31, 2025. Rent in the amount $1,000.00 was due on the first day of the month and a $500.00 security deposit was paid on January 12, 2024.

Landlord’s Evidence and Submissions

[7] The Landlord’s evidence is summarized as follows.

[8] The Landlord provided evidence regarding the negotiation of the tenancy agreement. On January 12, 2024 the parties entered into a written tenancy agreement and the Landlord gave the Unit’s keys to the Tenants.

[9] The Tenants agreed to clean the Unit in exchange for being able to move in early and not having to pay pro-rated rent for January of 2024.

[10] On January 17, 2024 the Tenants first emailed the Landlord with complaints about the condition of the Unit. Four hours later the Tenants emailed the Landlord a second time advising that they decided not to move into the Unit. The Landlord did not have time to fix the issues raised by the Tenants.

[11] The Landlord was able to re-rent the Unit for February 1, 2024 and the Landlord returned the $1,000.00 that the Tenants had paid for February 2024 rent. The Landlord retained the security deposit.

[12] The Landlord stated that the Tenants wanted their security deposit back. However, the Landlord submits that she is authorized to retain the security deposit based upon the additional terms of the tenancy agreement, which state in part as follows:

> *"If the lease is broken the security deposit will be withheld.*
> *Minimum 30 days notice of vacation of the apartment or security deposit will be withheld.*
> *Notice of vacation must be given on the first of the month.*
> *There is a $100 nonrefundable pet deposit.*
> *There is a minimum $150 cleaning fee."*

[13] The Landlord provided the Tenants with a Notice of Intention to Retain Security Deposit (Form 8) dated January 22, 2024.

[14] The Landlord completed additional work and incurred additional costs re-renting the Unit. The Landlord re-advertised the Unit using Kijiji.

Tenants' Evidence and Submissions

[15] The Tenants' evidence is summarized as follows.

[16] The Tenants agreed to rent the Unit but later decided not to move in because of the condition of the Unit. The Tenants submitted into evidence 32 photographs of the Unit and the Residential Property.

[17] The Tenants stated that the Unit was moldy and the former tenants may have had a pet based upon the smell. The Unit also had a strong smell of ammonia. The Tenants started having physical symptoms after visiting the Unit.

[18] The Tenants stated that they did not damage the Unit, they did not make the Unit unclean, and the Landlord was able to re-rent the Unit as of February 1, 2024, without a loss of rental income.

[19] The Tenants seek double the security deposit because the Landlord did not file an application to retain the security deposit within 15-days of the end of the tenancy.

ANALYSIS

i. Basis for ending the tenancy

[20] For the reasons below, the Officer finds that the Tenants had a valid basis for ending the tenancy as of January 17, 2024.

[21] The *Residential Tenancy Act* (the *"Act"*) came into force on April 8, 2023. Subsections 28(1) and (2) state:

> *(1) A landlord shall provide and maintain the residential property in a state of repair that*
> *(a) complies with the health, safety and housing standards required by law; and*
> *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*
>
> *(2) For greater certainty, subsection (1) applies despite the tenant's knowledge of the state of repair of the residential property prior to entering into the tenancy agreement.*

[22] The Tenants had a valid ground to end the tenancy based upon the condition of the Unit. As of the move in date, the Landlord was required to provide the Tenants with the Unit in a clean and undamaged state. The Tenants included in the Evidence Package photographs of the Unit providing objective evidence that the Unit was unclean and damaged. Any agreement by the Tenants to a lesser condition as of the move-in date was not valid pursuant to section 5 of the *Act*, which states:

Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.

[23] The evidence presented establishes that the Tenants did not damage the Unit or cause uncleanliness. Due to the Landlord's mitigation efforts, the Landlord did not lose any rental income. The Officer notes that damage, cleaning and rent owing are the most common monetary claims landlords make at the end of a tenancy.

[24] During the hearing the Landlord stated that she incurred additional expenses due to her mitigation efforts. However, due to the initial condition of the Unit the Officer finds that this claim is not recoverable.

[25] Even if the Tenants did not have a valid basis for ending the tenancy, there would be an additional issue regarding whether the Landlord's work re-renting the Unit is a non-recoverable cost of doing business. It is unnecessary for the Officer to determine this matter in this decision.

ii. Automatic deductions from the security deposit

[26] For the reasons below, the Officer finds that the tenancy agreement terms allowing for automatic security deposit deductions are invalid.

[27] Subsection 15(c) of the *Act* provides the following prohibition:

A landlord shall not
(c) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement.

[28] The additional terms of the tenancy agreement state that the Landlord can withhold all of the security deposit if the tenancy agreement is broken or 30 days' notice to terminate is not provided by the Tenants. The agreement also states that there is a $100.00 nonrefundable pet deposit and a minimum $150.00 cleaning fee.

[29] These terms state that the Landlord can keep the security deposit even though the Landlord may not have sustained any financial loss. These terms conflict with subsection 15(c) and are not a valid basis for the Landlord to retain the security deposit.

[30] Instead, the Landlord was required to follow the process in the *Act* for retaining or returning a security deposit.

iii. Double the security deposit

[31] For the reasons below, the Officer finds that the Landlord must pay the Tenants double the security deposit plus interest on the original security deposit.

[32] The current law regarding the retention or return of a security deposit is stated in section 40.

[33] In Order LR23-76[1] the Island Regulatory and Appeals Commission (the "Commission") determined a matter where a landlord has served a Notice of Intention to Retain Security Deposit (Form 8), which is a form prescribed by the repealed *Rental of Residential Property Act*, RSPEI 1988, R-13.1. The Commission stated as follows:

"13. The new RTA imposes a strict 15-day time limit. A landlord is required to either return the security deposit or make an application to the Director claiming against the security deposit, within 15 days after the tenancy ends (subsection 40(1)). Where a landlord does

[1] Website link: https://irac.pe.ca/wp-content/uploads/Order-LR23-76.pdf

not comply with subsection 40(1), they are prohibited from claiming against the security deposit and must pay the tenant "double the amount of the security deposit" (subsection 40(4)).

14. The policy behind the security deposit provisions in the new RTA appears to be to prevent landlords from withholding money from their tenants for long periods of time without actually making an application to claim against the security deposit. The new RTA puts the onus on a landlord to bring proceedings to prove his or her right to the tenant's security deposit rather than putting the onus on the tenant to bring proceedings to get the security deposit back.

15. In the present appeal, the Landlord served the Tenants with a Form 8, prescribed under the former Rental of Residential Property Act, ten days after the end of the tenancy. However, he did not make application to the Director within 15 days, or at all, as required by the new Act. Instead, the Tenants had to bring the Application that is the subject of this appeal in order settle the issue of the security deposit. It was the Landlord's failure to follow the provisions of the new RTA and file an application with the Director, not the mere use of the wrong form, which triggered the consequences of subsection 40(4) of the Act.

16. The language of section 40(4) is non-discretionary. Both the Commission and the Rental Office are administrative bodies created by statute and are bound to apply the legislation as written. In this case, the Landlord failed to comply with the requirements of the RTA and did not file an application with the Rental Office to make a claim against the security deposit within 15 days. Therefore, the consequences set out in subsection 40(4) apply.

17. Accordingly, the Commission agrees with the outcome of Order LD23-456 and this appeal is dismissed. The Landlord shall pay the Tenants double the amount of the outstanding security deposit, plus accrued interest on the original (non-doubled) deposit amount…"

[34] In Order LR24-08[2] the Commission issued an award for double the security deposit against a landlord that did not file an application to keep the security deposit within fifteen days. The landlord had served a Notice of Intention to Retain Security Deposit a few days after the tenant vacated the rental unit (see paragraph [29] of Order LD24-010[3]).

[35] In this case the Landlord did not file an application within the 15-day deadline. As a result, the Landlord must pay the Tenants double the security deposit, as calculated below:

Item	Amount
Security Deposit	$500.00
Interest (12 JAN 2024 to 17 MAY 2024)	$3.87
Security Deposit (Double Awarded)	$500.00
Total	$1,003.87

[2] Website link: https://irac.pe.ca/wp-content/uploads/Order-LR24-08.pdf
[3] Website link: https://peirentaloffice.ca/wp-content/uploads/LD24-010.pdf

CONCLUSION

[36] The Application is valid.

[37] The Landlord must pay the Tenants double the security deposit plus interest in the amount of $1,003.87, by the timeline below.

[38] The Tenants are not responsible for the Landlord's costs of re-renting the Unit.

[39] The Officer also notes that, despite missing the 15-day deadline for retaining the security deposit, the Landlord should have filed an application with the Rental Office for any claims against the Tenants for any offset to the award of double the security deposit.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenants $1,003.87 by June 6, 2024.

2. The Tenants are not responsible for the Landlord's costs of re-renting the Unit.

DATED at Charlottetown, Prince Edward Island, this 17th 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.