

INTRODUCTION

- [1] On March 8, 2024 the Landlords filed a *Landlord Application to Determine Dispute (Form 2(B))* (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office") seeking to retain the Tenant's security deposit and additional compensation.
- [2] On March 11, 2024 the Tenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the "Tenant Application") with the Rental Office seeking the return of pro-rated rent for February of 2024.
- [3] The Landlord Application and the Tenant Application are collectively referred to as the "Applications."
- [4] On April 5, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on April 30, 2024 and a copy of the Applications.
- [5] On April 29, 2024 the Rental Office emailed an evidence package to the parties (the "Original Evidence Package"). The Landlords had submitted documentary evidence and a video. The Tenant had not submitted any evidence.
- [6] On April 30, 2024 at 11:00 a.m. the Landlords joined the teleconference hearing before the Residential Tenancy Officer (the "Officer"). The Rental Office telephoned the Tenant and was advised that the Tenant was unaware of the scheduled hearing. The Officer adjourned the hearing.
- [7] On May 1, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing rescheduled for 11:00 a.m. on May 23, 2024 along with copies of the Applications. The parties were provided additional time to submit documentary evidence to the Rental Office.
- [8] The Tenant had technological difficulties submitting evidence to the Rental Office and the hearing date was adjourned again. On May 22, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing rescheduled for 11:00 a.m. on June 4, 2024. The parties were provided additional time to submit documentary evidence to the Rental Office.
- [9] On May 31, 2024 the Rental Office emailed the parties an updated evidence package, which replaced the Original Evidence Package.
- [10] On June 3, 2024 the Rental Office emailed a supplementary evidence package to the parties containing additional evidence submitted by the Tenant.
- [11] On June 4, 2024 the Tenant advised the Rental Office that she had not watched the Landlords' video. The hearing time was rescheduled from 11:00 a.m. to 11:20 a.m. to provide the Tenant with the opportunity to view the video prior to the teleconference hearing.
- [12] On June 4, 2024 at 11:20 a.m. the Landlords and the Tenant participated in a teleconference hearing before the Officer for determination of the Applications. The parties did not raise preliminary matters at the hearing.

ISSUES

- Issue 1: Has the Tenant established a valid claim for pro-rated February 2024 rent?
- Issue 2: Have the Landlords established valid claims against the security deposit and for additional compensation?

SUMMARY OF THE EVIDENCE

- [13] The Unit is a three-bedroom, one-and-a-half-bathroom single family home that was built in 2020. The Landlords purchased the Unit as their retirement home.
- [14] The Landlords and the Tenant entered into a written, fixed term tenancy agreement that commenced on November 1, 2020. Rent in the amount of \$1,650.00 was due on the first day of the month. A \$1,000.00 security deposit was paid within three days of the move-in date. The Tenant was the first tenant to occupy the Unit.
- [15] The Landlords and the Tenant were parties to earlier eviction proceedings before the Rental Office (Order LD23-276), the Island Regulatory and Appeals Commission (the "Commission"; Order LR23-34), and the Prince Edward Island Court of Appeal (2024 PECA 5). The tenancy was terminated due to the Tenant denying the Landlords access to the Unit.
- [16] On February 23, 2024 the Tenant was required to vacate the Unit due to enforcement by Sheriff Services of the eviction order. The Tenant paid rent for the entire month of February 2024.

Landlords' Evidence and Submissions

- [17] The Landlords' evidence is summarized as follows.
- [18] In August or September of 2023 the Tenant told the Landlords that there were cockroaches in the Unit. The Tenant asked the Landlords to put her up at a hotel. The Tenant told the Landlords that a new family had moved into the neighbourhood and she suspected the new neighbours were the source of the cockroaches. The Landlords spoke to all of the neighbours nearby the Unit and were told that there were cockroach issues in the surrounding properties. The Landlords assume that the cockroach issue was due to something done by the Tenant.
- [19] The Landlords contacted a health inspector (the "Inspector") and the Landlords were provided with access to the Unit for the first time in over a year. The Inspector determined that there were cockroaches in the Unit because the Tenant had a jar containing three or four cockroaches. The Inspector told the Landlords that at least ninety percent of the personal property had to be removed from the Unit before fumigation could take place. It was not merely a matter of items being moved away from the walls. The Tenant was given an order to remove items from the property but did not comply with the order. The Landlords submitted into evidence a letter from the Department of Environmental Health dated October 13, 2023 (the "Environmental Health Letter").
- [20] The Landlords spoke four or five times with a pest control technician ("S") from Legault Pest Management ("Legault"). The Landlords were advised by S that he went to the Unit two or three times and the Tenant had not removed any significant amount of personal property. S told the Landlords there was no way he could guarantee that fumigation would be successful because of the amount of the Tenant's personal property in the Unit. S told the Landlords that they do not fumigate personal property because it is too dangerous.
- [21] The Landlords dispute the Tenant's evidence that there was any issue with paying Legault for pest control treatment.
- [22] The Landlords stated that they were constantly on the telephone with the Inspector and S to move things along. The Landlords realized that there was nothing that they could do to address the cockroach infestation so long as the Tenant did not remove her personal property from the Unit.
- [23] The Landlords submitted into evidence a video taken on February 23, 2024 showing the Tenant's personal property in the Unit. The Landlords stated that no effort had been made by the Tenant to remove her personal property to allow for fumigation of the Unit.

- [24] The Landlords paid professional movers to move out the Tenant's personal property and put it into a storage unit to expedite the fumigation of the Unit. The fumigation process takes about six weeks.
- [25] The Landlords submitted into evidence an invoice dated March 2, 2024 in the amount of \$1,243.79 for the cost of packing the Tenant's personal property. The Landlords submitted into evidence an invoice dated March 6, 2024 in the amount of \$822.25 for the cost of moving part of the Tenant's personal property to a storage unit. The movers' vehicle did not have enough space for all of the Tenant's personal property. The Landlords submitted into evidence an invoice dated March 19, 2024 for a vehicle rental used by the Landlords to transfer most of the Tenant's remaining personal property to the storage unit, in the amount of \$75.14. These moving costs total \$2,141.18.
- [26] The Landlords submitted into evidence a receipt dated March 4, 2024 for the storage unit rental for one month, in the amount of \$226.44. The Landlords received two sets of keys to the Unit and provided one copy to a representative of the Tenant.
- [27] The Landlords asked the movers to look for cockroaches and check for cockroach traps. The movers discovered four traps, which were all empty, and the movers saw no sign of cockroaches. The Landlords believe that the Tenant's claim of a cockroach infestation was untrue. Therefore, the Landlords did not advise the storage company of any cockroach issues regarding the Tenant's personal property.
- [28] The Landlords later spoke with the manager of the storage unit company. The manager advised the Landlords that they were not concerned about cockroaches in the storage unit because any cockroaches would be unable to survive the low temperatures.
- [29] The Landlords obtained a Merry Maids quote dated April 8, 2024 for a standard clean of the Unit, in the amount of \$660.00.
- [30] There was no mould in the Unit when the Tenant originally moved in. After the Tenant vacated the Unit, the Landlords noticed a thin film of black mould around the Unit because the air exchanger was not turned on. The air exchanger filters were cleaned 1.5 years ago. The Landlords discovered that the filters were clean after the Tenant move out, which indicates that the Tenant had not kept the air exchanger on. The Landlords stated that the standard cleaning quote would not cover the additional cleaning work required for the mould.
- [31] The Landlords and their family cleaned the Unit. The Landlords stated that their cleaning cost was \$50.00 less than the Merry Maids quote.
- [32] The Tenant left six or eight holes in the walls that penetrated the gyprock, which requires filling, sanding and two coats of paint to be repaired. The Landlords wanted to get the Unit re-rented right away. The Landlords decided to paint over the damage because the person that was intended to complete the work was unavailable. The Landlords had been quoted \$350.00 for the repair work. The tenants now occupying the Unit will move out in November and either the Landlords or a contractor will complete the repairs when the Unit is vacant.

Tenant's Evidence and Submissions

- [33] The Tenant's evidence is summarized as follows.
- [34] On September 17, 2023 the Tenant discovered cockroaches in the Unit and messaged the Landlords. The Tenant does not know how the cockroaches entered the Unit. The Tenant stated that Legault only attended the Unit on one occasion. On September 19, 2023 the Landlords messaged the Tenant stating that Legault would be in touch to make an appointment.
- [35] The Tenant received a message from Legault on September 22, 2023. Legault attended the Unit and determined that there were cockroaches present by looking at the specimens caught in a jar

by the Tenant. Legault stated that the cockroaches had gone through a full cycle because there were adults and nymphs. Legault told the Tenant that a full extermination cycle of six weeks was necessary, which involved three sprays at two week intervals. Legault provided the Tenant with a standard handout that states food must be put in sealable containers out of the cupboards, the appliances will need to be pulled out and switch covers must be removed and personal property must be moved two or three feet from the wall to spray the baseboards (the "Legault Letter"). The document does not state that personal property must be removed from a rental unit. The Tenant stated that such a practice would spread the infestation.

- [36] The Tenant submits that the Landlords claims that the house had to be emptied were untrue. All that needed to be done was to move items two or three feet from the walls. The Landlords only had pest control put down five glue traps. The Landlords did not have the Unit sprayed. The Tenant purchased cans of fog bomb from Canadian Tire and roach bait gel from Amazon.
- [37] The next text message communication with Legault after September 22, 2023 was not until March 18, 2024. Legault only accessed the Unit on one occasion while the Tenant occupied the Unit.
- [38] The Tenant had also requested Environmental Health complete an inspection of the Unit. The Inspector told the Landlords that there was an active cockroach infestation in the Unit and the Landlords were to take preventative measures. The Landlords did not properly respond to the infestation or provide a treatment plan. The Inspector only attended the Unit on one occasion.
- [39] The Tenant was in the process of emptying and throwing away items when the Environmental Health Letter was issued. The Tenant did not receive the Environmental Health Letter after three weeks. The Tenant contacted the inspector was provided a digital copy
- [40] The Tenant stated that she contacted the Inspector regarding what the Tenant could do because of her physical limitations. The Tenant submitted into evidence an email from the Inspector that the Tenant stated she received on October 23, 2023. Based upon this email the Tenant stated she was waiting for action from the Landlords. The Tenant stated that the Landlords never gave her any specific instructions.
- [41] The Tenant contacted pest control and was advised that pest control was waiting on instructions from the Landlords. The Tenant was told that Legault would not spray the Unit because the Landlords would not approve payment.
- [42] The cockroaches were not eradicated when the Tenant moved out of the Unit. Cockroaches were crawling out of fireplace and plugs and moving across the floors and walls.
- [43] The Tenant had professional movers take her personal property from the storage unit to her new place and unpack the personal property. It took the Tenant's movers less time than the Landlords movers to complete this work. The Tenant submits that the Landlords' costs are exaggerated.
- [44] The black mould in the house has nothing to do with the air exchanger not being turned on.
- [45] The Tenant denies damaging the Unit. The Tenant submits that, after living in the Unit for over three years, the damage claimed by the Landlords would be normal wear and tear. The Tenant is unsure of the wall hole locations shown in the Landlords' evidence. These photographs may show where curtain rods were pulled out, however, the rods were not removed by the Tenant before she left the Unit on February 23, 2024.
- [46] Two weeks after being evicted the Tenant attended the Unit with a representative and met with one of the Landlords. The Tenant explained that the wall stickers could be removed from the walls without damage by using a hair dryer on a low setting.

ANALYSIS

Issue 1: Pro-rated February 2024 Rent

- [47] Subsection 74(1) of the *Act* provides the law regarding a landlord's right to compensation after a tenancy has been terminated, stating as follows:

A landlord is entitled to compensation for a former tenant's use and occupation of the rental unit after the tenancy has been terminated.

- [48] The evidence of the parties establishes that the Tenant paid \$1,650.00 in rent for February 2024 and was required to vacate the Unit on February 23, 2024.
- [49] The Tenant did not have use and occupation of the Unit for six days, from February 24 to February 29, 2024. Therefore, the Tenant must be credited six days rent, in the amount of \$341.38 (6 days divided by 29 days multiplied by \$1,650.00).

Issue 2: Security Deposit and Compensation

Personal Property Moving and Storage

- [50] The Landlords made a financial claim against the Tenant for the cost of moving and storing the Tenant's personal property after the tenancy ended.
- [51] The *Act* sets out a tenant's responsibility to remove personal property from a rental unit and a landlord's responsibility for moving and storage. Subsections 43(1) and (2) state:

A tenant is not entitled to leave the tenant's personal property in the rental unit after the tenancy agreement is terminated.

Where a tenant abandons or vacates a rental unit and leaves personal property on the residential property, the landlord shall either
(a) remove the personal property and immediately place it in safe storage; or
(b) store the personal property on the residential property in a safe manner.

- [52] When a landlord moves and stores a tenant's personal property that has been left behind, the *Act* has compensation provisions for the landlord. Subsections 43(8) and (10) state:

The tenant or owner of the personal property may, within the one-month period referred to in subsection (4), claim and take possession of the personal property by paying the landlord the costs reasonably incurred by the landlord to remove and store the property.

Where a landlord stores personal property on the residential property in accordance with clause (2)(b), the storage costs referred to in subsection (8) shall be the lesser of the standard rate charged by public storage facilities or the rental rate of the rental unit.

- [53] The Tenant's evidence was that there were cockroaches in the Unit when she was required to vacate on February 23, 2024. The Tenant submits that she was unable to remove her personal property from the Unit when she vacated because of the cockroach infestation. The Tenant also submits that the Landlords did not fulfill their obligation in the Environmental Health Letter to provide a document from the pest control company regarding what needed to be completed prior to treatment.
- [54] The Landlords question whether there were cockroaches in the Unit at the end of the tenancy. The Landlords submit that the volume of the Tenant's personal property in the Unit prevented effective

cockroach treatment. The Landlords submit that the Tenant did not comply with the Environmental Health Letter because a large volume of the Tenant's personal property remained in the Unit at the end of the tenancy.

- [55] The Officer is unable to find what led to the cockroaches entering the Unit as there is insufficient evidence on this matter.
- [56] It appears to the Officer that there were cockroaches in the Unit at the time the Tenant vacated the Unit. The Environmental Health Letter stated that on September 21, 2023 the presence of cockroaches was confirmed in the Unit. The Unit was not professionally fumigated while the Tenant occupied the Unit. The Tenant's direct evidence was that she witnessed cockroaches in the Unit at the end of the tenancy. The Landlords provided evidence regarding fumigation of the Unit after the Tenant vacated. The evidence of S, the Landlords' pest control technician, may have assisted the determination of this matter. However, the Landlords did not arrange for this witness to participate in the teleconference hearing.
- [57] The *Rental Accommodation Regulations* and the Environmental Health Letter imposed obligations on both parties to be actively engaged in addressing the cockroach infestation. There was an obligation on both the Landlords and the Tenant to cooperate, which would involve open and engaged communication with one another. It appears to the Officer that, based on the evidence presented, there was some uncertainty regarding the steps that had to be taken regarding the removal of the Tenant's personal property from the Unit.
- [58] The Environmental Health Letter states that the amount of the Tenant's personal property in the Unit would pose a barrier to effective treatment of the cockroach treatment. It appears to the Officer that removal of a significant amount of personal property was necessary before treatment could begin. Upon receipt of this letter the Tenant ought to have made arrangements to remove a significant amount of personal property from the Unit to allow for effective treatment of the cockroach infestation.
- [59] However, the Officer does note that the Legault Letter does not discuss the removal of the Tenant's personal property from the Unit. The evidence does not establish further written instructions from Legault to the Tenant regarding the personal property. The Officer notes that the pest control technician, S, did not participate in the teleconference hearing to provide evidence regarding what he communicated to the Tenant.
- [60] The Inspector's email to the Tenant on October 23, 2023 states that, until pest control instructions were received, there was not a whole lot the Tenant could do besides packing up some items to be removed from the Unit. The email also requests that the Tenant follow up with the Inspector if the Tenant did not hear from the Landlords. However, the Tenant had already received the Legault Letter, which had instructions for the cockroach treatment but did not discuss the removal of personal property.
- [61] The Officer finds that, had there been better communication between the parties, the cockroach infestation could have been addressed at an earlier date.
- [62] The infestation arose after the Commission's decision regarding the eviction dispute and before the Court of Appeal decision. In Order LR23-34, issued July 25, 2023, the Commission stated in part at paragraph 19:

"In addition, the Commission finds that the evidence demonstrates that the landlord-tenant relationship has completely broken down. Such a relationship requires cooperation..."

- [63] Typically, a landlord would be entitled to the full moving and storage costs in accordance with section 43 of the *Act*. In these circumstances, where the parties have not established that they fulfilled their obligations to cooperate for the remediation of the cockroach infestation, the Officer

finds that only fifty percent of the Landlords' moving and storage costs are recoverable against the Tenant.

- [64] The evidence establishes that the Landlords' cost of moving the Tenant's personal property was \$2,141.18. The Tenant's submission that this cost is excessive is not persuasive to the Officer. The Landlords had a third party complete the packing and removal work. The Tenant stated that the cost of removing the items from the storage unit and moving them to her new place was lower than the Landlords' cost. However, the Officer notes that the work involved with packing the Tenant's personal property may take more time than the unpacking of these items.
- [65] On March 4, 2024, the Landlords rented a storage unit for one month for the Tenant's personal property, at a cost of \$226.44. The storage cost at the Unit for the period of February 24, 2024 to March 3, 2024 (9 days) would be based on the storage unit monthly rate, which is less than the monthly rent. The pro-rated amount would be \$65.74 (9 days divided by 31 days multiplied by \$226.44). The Landlords' total storage cost was \$292.18.
- [66] The moving and storage costs total \$2,433.36. The Landlords have established a claim for \$1,216.68 (50%).
- [67] With regard to Rental Office hearings, the best practice is for landlords and tenants to have their witness participate in the hearing. The witness would solemnly affirm to tell the truth, provide their testimony, and be available to answer questions regarding their evidence. Documents should also be submitted to the Rental Office in advance of the hearing that would be referred to by the witness during the hearing.
- [68] Emails, text messages, invoices and other documents with Legault may have assisted the determination of this matter.
- [69] It is the responsibility of landlords and tenants to have their witnesses participate in a teleconference hearing, not the Rental Office. Affidavits or written statements from a witness can be submitted into evidence. However, this is not the best evidence when the witness is not present to answer questions regarding their documentary evidence.

Cleaning

- [70] With regard to the Landlords' claims for cleaning and damage, clause 39(2)(a) of the *Act* states as follows:
- (2) 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...*
- [71] The Unit was newly built at the beginning of the tenancy.
- [72] The Landlords submitted into evidence photographs and a video of the Unit shortly after the Tenant vacated. Based upon this objective evidence, the Officer is satisfied that the Tenant did not leave the Unit in a reasonably clean condition at the time that she vacated the Unit. For example, the photographs of the Unit show the stove in an unclean state.
- [73] The Landlords provided a quote from a third party that estimated first time deep cleaning would cost \$660.00. The Landlords stated that this quote did not include mould removal and the actual cleaning cost by a third party would have been higher. The Landlords stated that, with the help of their family, they cleaned the Unit at a cost that was \$50.00 cheaper than the quoted amount, which amounts to \$610.00.

- [74] The Officer notes that the cleanliness standard at the end of a tenancy is reasonable cleanliness, not move-in ready condition for the next occupant. The Officer also notes that some portions of the cleaning, such as the stove, could have been completed regardless of the cockroach infestation. Other types of cleaning would have been more difficult. The Officer determined above that neither party has established that they fulfilled their obligations for addressing the cockroach infestation.
- [75] For these reasons, the Officer finds that the Tenant is not responsible for the Landlords' full cleaning cost. The Officer reduces the Landlords cleaning cost by 40% to address these matters, allowing a claim for \$366.00 (60% of \$610.00).

Damage

- [76] The Unit was new at the beginning of the tenancy and the Landlords' photographs show some damage to the walls of the Unit after the Tenant vacated.
- [77] The Tenant denied responsibility, stating that this damaged occurred after she was forced to vacate the Unit.
- [78] The Officer notes that the tenancy lasted over three years. Therefore, the amount of damage that would be considered reasonable wear and tear is broader than a tenancy that lasted for a brief period. The Officer has reviewed the objective photographic and video evidence of the Landlords and is not satisfied that the damage shown exceeds normal wear and tear for a relatively long tenancy. Therefore, the Landlords' wall damage claim is denied.

CONCLUSION

- [79] The Landlords and the Tenant have offsetting monetary awards. The Officer calculates the net amount as follows:

Item	Amount
Prorated February 2024 Rent	\$341.38
Security Deposit	\$1,000.00
Interest (3 NOV 2020 to 21 JUN 2024)	\$39.75
Moving and Storage Compensation	-\$1,216.68
Cleaning Compensation	-\$366.00
Total	-\$201.55

- [80] The Officer finds that the Landlords shall retain the Tenant's entire security deposit, interest and pro-rated February 2024 rent.

[81] There is a net amount of \$201.55 owed by the Tenant to the Landlords, which shall be paid by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Landlords shall retain the Tenant's entire security deposit, interest and pro-rated February 2024 rent.
2. The Tenant shall pay the Landlords \$201.55 by July 11, 2024.

DATED at Charlottetown, Prince Edward Island, this 21st day of June, 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.