

INTRODUCTION

- [1] On June 13, 2024 the Tenant 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 June 27, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on July 16, 2024.
- [3] On June 11, 2024 the Rental Office emailed the parties a 51-page evidence package (the "Evidence Package").
- [4] On July 16, 2024 the Tenant, the Tenant's witness ("TW1") and the Landlord participated in a teleconference hearing before the Residential Tenancy Officer (the "Officer") for determination of the Application. At the hearing the parties confirmed receipt of the Evidence Package.

ISSUE

Must the Landlord pay the Tenant double the security deposit?

SUMMARY OF EVIDENCE

- [5] The Unit is a one-bedroom, one-bathroom basement apartment that the Landlord has owned since June 1, 2016. The Landlord lives in the upper portion of the building.
- [6] The Landlord and the Tenant entered into a written, fixed term tenancy agreement for the period of November 1, 2022 to November 1, 2023. At the end of the fixed term the tenancy continued on a month-to-month basis. The Tenant paid a \$1,000.00 security deposit on October 31, 2022. Rent in the amount of \$1,300.00 was due on the first day of the month.
- [7] On March 18, 2024 the Landlord messaged the Tenant stating that the Tenant would need to move out of the Unit by June 1, 2024 because the Landlord's sister would be moving in. The Landlord and the Tenant later agreed to end the tenancy on May 1, 2024.

Landlord's Evidence and Submissions

- [8] The Landlord's evidence is summarized as follows.
- [9] Early in the tenancy the Landlord and another person installed a washing machine in the Unit and there was a water leak shortly afterwards. The Landlord stated that this water leak was limited.
- [10] The Landlord's position is that the Tenant is responsible for damage to the Unit. The Unit's floors were approximately two years old when the Landlord purchased the Unit in 2016. When the Tenant moved out, damage to the floor was discovered costing thousands of dollars to repair. The damage was caused by mould and dog urine. The Landlord stated that he had to replace the toilet because it was extremely dirty. The Landlord provided evidence regarding damage to a bathroom mirror and the Landlord discussed other damage.
- [11] The Landlord provided photographs of the Unit taken in early May of 2024.
- [12] The Landlord stated that written move-in and move-out condition inspection reports were not completed. The parties did not have earlier Rental Office applications or hearings. The Landlord did not file an application seeking to retain the security deposit.

Tenant's Evidence and Submissions

- [13] The Tenant's evidence is summarized as follows.
- [14] The Tenant denied responsibility for the Landlord's claims against the security deposit. The Tenant has two Labrador dogs that were about two years old when the Tenant moved into the Unit. The Tenant stated that the dogs did not urinate in the Unit except for two occasions where the Tenant noticed dog urine in the bathroom's shower. The dogs did not urinate on the floor.
- [15] There was water damage to the Unit on two occasions. On December 9, 2022 the Tenant noticed water on the Unit's floor shortly after the Landlord had installed a washing machine. The water covered a large portion of the Unit's floor. The Tenant immediately contacted the Landlord to advise of the water leakage and the Landlord attended the Unit.
- [16] Around early January of 2024 TW1 noticed water leaking into the Unit from the ceiling. TW1 immediately went upstairs and advised the Landlord of the problem. The Tenant submitted into evidence a photograph of the leaking ceiling taken approximately one or two weeks after the leak was discovered.
- [17] The Tenant submitted into evidence photographs of the Unit taken on May 2, 2024 when the Tenant last accessed the Unit.
- [18] The Tenant stated that written move-in and move-out condition inspection reports were not completed. The parties did not have earlier Rental Office applications or hearings.

ANALYSIS

- [19] For the reasons below, the Officer finds that the Landlord must pay the Tenant double the security deposit plus interest on the original security deposit.
- [20] Section 40 of the *Residential Tenancy Act* (the "Act") addresses the retention and return of a security deposit, stating in part as follows:
- (1) *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.*
- (2) *A landlord may retain from a security deposit an amount that*
- (a) *the Director has previously ordered the tenant to pay to the landlord; and*
- (b) *remains unpaid at the end of the tenancy.*
- (3) *A landlord may retain an amount from a security deposit if*
- (a) *at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
- (b) *after the end of the tenancy, the Director orders that the landlord may retain the amount.*
- (4) *Where a landlord does not comply with this section, the landlord*
- (a) *shall not make a claim against the security deposit; and*
- (b) *shall pay the tenant double the amount of the security deposit.*

- [21] The evidence establishes that the tenancy agreement ended on or about May 1, 2024. The Landlord did not return the security deposit or file an application with the Rental Office to retain the security deposit within the fifteen-day timeline (by May 16, 2024). There are no earlier Rental Office decisions authorizing the Landlord to retain the security deposit. The parties did not come to a written agreement that the Landlord could retain the security deposit. As a result, the Landlord must pay the Tenant double the security deposit plus interest on the original security deposit in accordance with subsection 40(4).
- [22] The Landlord's position is that the Tenant damaged the Unit and left it in an unclean state.
- [23] When a landlord seeks to retain a security deposit the landlord must prove valid grounds for keeping the security deposit. This means that the Landlord must provide sufficiently clear and convincing evidence to support the damage and cleaning claims.
- [24] 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...*
- [25] The Landlord did not complete move-in or move-out condition inspection reports or provide photographs showing the condition of the Unit at the beginning of the tenancy agreement. Therefore, the Officer does not have a baseline condition to assess the Landlord's damage and cleaning claims.
- [26] With regard to the Landlord's largest damage claim regarding the floors, the Tenant's evidence indicates that the damage may have been caused by water leakages. The evidence also establishes that the Tenant and TW1 immediately reported the Unit's water leakage problems to the Landlord.
- [27] Although the Landlord has asserted that the Tenant's dogs urinated on the floors, on the evidence presented the Officer cannot conclude that the Tenant's dogs in fact urinated on the Unit's floors. The Tenant's direct evidence was that the dogs did not urinate on the floors and only urinated in the shower on two occasions over the 18-month tenancy.
- [28] For these reasons the Officer finds that the damage claims have not been established against the Tenant.
- [29] The Tenant's photographs show large portions of the Unit in a condition better than reasonably clean condition. The Landlord submitted some close-up photographs of the Unit, such as the toilet and the top of the washer and dryer. With regard to the toilet, the Officer does not have objective evidence regarding its condition in November of 2022. With regard to the washer and dryer, it appears that limited cleaning would be necessary. Any cleanliness shortcomings regarding these specific parts of the Unit appears to the Officer to be offset by the higher than reasonably clean condition in large portions of the Unit.
- [30] For these reasons the Officer denies the Landlord's cleaning claims.
- [31] 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 Tenant for any offset to the award of double the security deposit.

CONCLUSION

[32] The Application is valid.

[33] The Landlord must pay the Tenant double the security deposit plus interest on the original security deposit in the total amount of \$2,037.23 by the timeline below, calculated as follows:

Item	Amount
Security Deposit	\$1,000.00
Interest (31 OCT 2022 to 17 JUL 2024)	\$37.23
Security Deposit (Double Awarded)	\$1,000.00
Total	\$2,037.23

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$2,037.23 by August 6, 2024.

DATED at Charlottetown, Prince Edward Island, this 17th day of July, 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.