

## INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 16, 2024 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Tenants’ Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for double the security deposit, in the amount of \$2,000.00 plus interest.
- [3] On May 16, 2024 the Tenants emailed the Tenants’ Application to the Landlord.
- [4] On June 4, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the Landlord’s Application”) with the Rental Office seeking compensation exceeding the security deposit, in the total amount of \$1,000.00.
- [5] On June 4, 2024 the Landlord emailed the Landlord’s Application to the Tenants.
- [6] In this decision the Tenants’ Application and the Landlord’s Application are collectively referred to as the “Applications.”
- [7] On June 6, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing, along with a copy of the Applications.
- [8] On July 5, 2024 the Rental Office provided the parties access to the evidence package (the “EP”) by Titan File. The EP includes 99-pages of documents submitted by the parties, and 5 videos submitted by the Landlord.
- [9] On July 9, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenants and the Landlord participated at the hearing.

## ISSUES

- i. Must the Landlord pay the Tenants double the security deposit?
- ii. Has the Landlord established a valid claim to be offset against the Tenants’ claim?

## SUMMARY OF EVIDENCE

- [10] On November 1, 2023 the parties entered into a written, fixed-term tenancy agreement for a room. Rent was \$1,200.00 due on the first day of the month. On November 1, 2023 a \$1,000.00 security deposit was paid. The Tenants vacated the Rental Unit on April 30, 2024 upon the expiration of the fixed-term.

## TENANTS’ EVIDENCE AND SUBMISSIONS

- [11] The Tenants submitted 55-pages of documents into evidence including: a copy of the tenancy agreement, a *Form 2 (B) Landlord Application to Determine Dispute* dated May 7, 2024, an email, text messages, a screenshot of a bath drain trim ad, a Maritime Electric bill, e-transfers, photographs and a transcript of communication between the parties.
- [12] The Tenants stated that they provided one-month notice that they were vacating the Rental Unit for April 30, 2024. The Tenants stated that they cleaned the Rental Unit and asked the Landlord to do an inspection. The Tenants stated that they were advised by the Landlord that he would inspect the Rental Unit after they vacated.
- [13] On May 7, 2024 the Tenants received an email from the Landlord with an attached Form 2 (B). The Tenants stated that they contacted the Rental Office and were informed that the Landlord had not filed the Form 2 (B) with the Rental Office and to wait until that happened.

- [14] The Tenants stated that the Landlord never returned their security deposit. The Tenants stated that the Landlord accused them of damage and uncleanliness. The Tenants stated that other tenants use the common areas such as the bathroom and the kitchen. The Tenants denied responsibility for damage and uncleanliness in the common areas.
- [15] The Tenants stated that the Landlord has not provided before photographs of the lawn and that other people have parked on the grass.
- [16] The Tenants stated that heat and electricity are included in the tenancy agreement, and that they should not be responsible for those expenses. The Tenants stated that the month of February is very cold so it is not uncommon to see the usage increase.

#### LANDLORD'S EVIDENCE AND SUBMISSIONS

- [17] The Landlord submitted 32-pages of documents into evidence including: photographs, receipts, invoices, Maritime Electric bills, and text messages.
- [18] The Landlord stated that on May 7, 2024 he did send the Tenants the Form 2 (B) to keep the security deposit. The Landlord stated that he did not know that he needed to file it with the Rental Office.
- [19] The Landlord stated that he requested the Tenants do a final inspection, but the Tenants wanted to wait until they both could do it. The Landlord stated that he had another tenant moving in and could not delay the inspection.
- [20] The Landlord stated that the Tenants parked on the grass and caused damage to the lawn (page 67-71 of the EP). The Landlord stated that he witnessed the Tenants' car parked on the grass. The Landlord stated that he seeded and did the work himself. The Landlord stated that it took approximately 20 hours of labour to complete. The Landlord stated that he spent over \$1,000.00 on the lawn work, microwave repair, minor repairs to the bathroom, and cleaning.
- [21] The Landlord stated that another tenant informed him that the Tenants caused the damage in the bathroom.
- [22] The Landlord stated that the Tenants used an unreasonable amount of electricity and heat, causing the bill to increase more than its average monthly amount.

#### ANALYSIS

##### Issue i. Must the Landlord pay the Tenants double the security deposit?

- [23] The Tenants' Application is made in accordance with clause 75 of the Act, and seeks a monetary order for double the security deposit pursuant to clause 40(4) of the Act. The relevant law states:

**59. Application respecting contravention**

*Where a landlord contravenes the obligations set out in sections 22 to 24 and 26 to 29, a material term of the tenancy agreement or a **statutory condition set out in Part 2**, the tenant may make an application to the Director under section 75 for an order specified under subsection 85(1). [emphasis added]*

**40. Return of security deposit**

- (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. [emphasis added]***

***Landlord may retain amount from 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.*

***Retention by landlord, other circumstances***

- (3). A landlord may retain an amount from a security deposit if
  - (a) *at the end of the 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.*

***Consequences of non-compliance***

- (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.*

- [24] The Island Regulatory and Appeals Commission (the “Commission”) in Order LR23-69, paragraph 15 made the following comment as it relates to clause 40 of the Act:

*“Subsections 40(2) and (3) are the only exceptions to the provisions contained in section 40. The Commission finds that there is no exemption from the rigours of section 40...”*

- [25] More recently, the Commission in Order LR24-10, paragraph 14 made such comments as it relates to clause 40 of the Act and the consequences of non-compliance:

*“Section 40 of the Act imposes strict requirements on a landlord and failure to meet those requirements incurs a very substantial penalty. The Commission notes that there is no provision in the Act to allow the Director or the Commission to temper or waive the provisions set out in section 40 of the Act. The Landlords feel that the application of section 40 to them, in these factual circumstances, is unjust. However, as the Act does not provide the Director or the Commission any discretion to waive the provisions of section 40, the Commission finds that there is no error in Order LD23-617 and accordingly the Commission dismisses the appeal and confirms Order LD23-617.”*

- [26] In this case, it is undisputed that the Tenants vacated the Rental Unit on April 30, 2024 and the tenancy ended. This means that the Landlord had until May 15, 2024 to either return the security deposit plus interest to the Tenants or file a *Form 2 (B) Landlord Application to Determine Dispute* with the Rental Office. The evidence establishes that the Landlord did neither. The Landlord did give the Tenants a Form 2 (B) on May 7, 2024, informing the Tenants his intention of retaining the security deposit. However, the Landlord did not file that Form 2 (B), dated May 7, 2024 with the Rental Office, as required by clause 40(1)(b) of the Act.

- [27] Therefore, the Officer finds that the Landlord did not comply with clause 40(1) of the Act, triggering clause 40(4) of the Act. The Officer finds that the Landlord shall pay the Tenants double the security deposit plus interest on the principal amount paid. The Tenants’ Application is allowed.

**Issue ii. Has the Landlord established a valid claim to be offset against the Tenants' claim?**

[28] The Landlord's Application is made in accordance with clause 75 of the Act, seeking compensation in the amount of \$1,000.00.

[29] Clause 39(2) of the Act states:

**39. Obligations on vacating**

(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; and*
- (b) *give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

[30] The Landlord's Application was initiated by the Landlord. The Landlord bears the onus of proving his claims on a balance of probabilities. This means that a decision-maker must be satisfied there is sufficiently clear and convincing evidence to support his claims.

**THE CLAIMS****1. Lawn damage**

[31] The Landlord alleges that the Tenants' car parked on the lawn caused damage beyond normal wear and tear. The Tenants deny solely causing the damage to the lawn, stating that others have parked on the lawn and that the Landlord failed to prove the condition of the lawn prior to the tenancy.

[32] The Officer finds that the Landlord has not provided sufficient evidence to establish that the Tenants' parking on the lawn solely or partially caused the damage to the lawn. The Officer agrees with the Tenants' submissions, that is, the Landlord failed to establish the condition of the lawn at the start the tenancy and failed to establish that the Tenants' contributed to undue damage to the lawn. The claim is denied.

**2. Damage and cleanliness in the Rental Unit and common areas**

[33] The Officer finds that the Landlord has not provided sufficient evidence to establish the Tenants caused undue damage to the Rental Unit, or the common areas. The Officer finds that the Landlord provided photographs at the end of the tenancy but no photographs before the tenancy. Further, the Officer finds that the Landlord has not established that the Tenants caused the alleged damage, or condition of the common areas. The Landlord stated that another tenant in the residential property alleged the damage and condition of the common areas were caused by the Tenants. The Officer finds this to be hearsay evidence because this other tenant did not provide sworn or affirmed direct evidence. The Landlord has provided insufficient evidence to prove this claim.

**3. Electricity bills**

[34] The Officer finds that the evidence establishes that heat and electricity are included services in the tenancy agreement (page 11 of the EP). Therefore, the Officer finds that the Landlord is not entitled to these expenses. The claim is denied. The Landlord's Application is denied.

**CONCLUSION**

[35] The Tenants' Application is allowed. The Tenants' compensation is calculated as follows:

| Item                                  | Amount     |
|---------------------------------------|------------|
| Security Deposit                      | \$1,000.00 |
| Interest                              | \$16.35    |
| Security Deposit (Double Awarded)     | \$1,000.00 |
| Total Compensation Awarded to Tenants | \$2,016.35 |

[36] The Landlord's Application is denied.

**IT IS THEREFORE ORDERED THAT**

I. The Landlord shall pay the Tenants \$2,016.35 by July 29, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 17th day of July, 2024.

(sgd.) Cody Burke

Cody Burke  
Residential Tenancy Officer

**NOTICE****Right to Appeal**

This Order can be appealed to the Island Regulatory and Appeals 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.