INTRODUCTION

[1] On May 3, 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 to recover an unlawful rent increase pursuant to clause 50(8) of the *Residential Tenancy Act* (the "Act"). On May 15 and 21, 2024 the Tenants amended the Tenants' Application to include additional compensation for the Landlords' breach of the Act, in the amount of $7,625.04.

[2] On May 14, 2024 the Landlords filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Landlords' Application") with the Rental Office seeking to retain the Tenants' security deposit. On May 21, 2024 the Landlords amended the Landlords' Application to seek compensation exceeding the security deposit, in the amount of $1,016.54.

[3] On May 21, 2024 the amended Tenants' Application was emailed to the Landlords.

[4] On May 24, 2024 the amended Landlords' Application was emailed to the Tenants.

[5] The Tenants' Application and the Landlords' Application are collectively referred to in this decision as the "Applications".

[6] On May 30, 2024 the Rental Office emailed and mailed the parties notice of a teleconference hearing along with a copy of the Applications.

[7] On June 24, 2024 the Rental Office emailed and made available through Titan File a 120-page evidence package (the "EP"), along with two videos submitted by the Tenants, and a two-page Environmental Health Report (the "Report"), submitted as a Director's Exhibit.

[8] On July 2, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Landlords and the Tenants: B.B., A.C., K.D., N.N., S.H., and Y.T. participated at the hearing. After the hearing, the Landlords submitted additional documents that form part of the record.

ISSUES

i. Are the Tenants entitled to recover rent due to an unlawful increase?
ii. Are the Tenants entitled to additional compensation?
iii. Are the Landlords entitled to retain the security deposit?
iv. Are the Landlords entitled to compensation exceeding the security deposit?

SUMMARY OF EVIDENCE

[9] The Rental Unit is a 7-bedroom, 3.5 bathroom, single-family home, purchased by the Landlords in July 2019. In August 2019, the Rental Unit was rented for $3,000.00. In August 2020, the rent for the Rental Unit was reduced to $2,000.00 due to the COVID-19 pandemic.

[10] In September 2021, B.B., A.C., and K.D. moved into the Rental Unit with three other tenants not party to this proceeding. The Rental Unit was advertised for $2,000.00 per month, however, $3,000.00 per month was charged and a security deposit of $3,000.00 was paid at the time.

[11] In August 2022, B.B., A.C., K.D. and three other tenants renewed their fixed-term agreement. The terms and conditions of the tenancy agreement remained the same. In 2023 the other three tenants vacated the Rental Unit.

[12] In March 2023, N.N. moved into the Rental Unit. In May 2023, the Tenants renewed their fixed-term tenancy agreement, and N.N. was included in the agreement.

[13] In June 2023, S.H. moved into the Rental Unit. In August 2023, Y.T. moved into the Rental Unit.

[14] On August 1, 2023 the Tenants signed a written, fixed-term tenancy agreement. Rent remained at $3,000.00 due on the first day of the month. The $3,000.00 security deposit carried forward.

[15] On May 2, 2024, the Tenants vacated the Rental Unit, and the parties mutually ended the tenancy.

TENANTS' EVIDENCE AND SUBMISSIONS

[16] The Tenants submitted 53-pages of documents into evidence including: the most recent tenancy agreement, a former August 8, 2022 tenancy agreement, a former August 2020 tenancy agreement, the Report, an advertisement and text message, photographs, an energy history screenshot, Feasible Fuels invoices, receipts, and a Feasible Fuels account consumption report from September 1, 2022 to May 1, 2023. The Tenants also submitted two videos into evidence.

[17] The second page of the Tenants' Application was not included in the EP in error. The Tenants and the Landlords both received a copy of the Tenants' Application, despite the omission in the EP.

Issue i. The unlawful rent increase

[18] The Tenants stated that K.D. originally found the advertisement for the Rental Unit. In 2021, the Rental Unit was advertised for $2,000.00. The Tenants stated that B.B., A.C., K.D., and the other tenants paid $3,000.00 for rent. However, the Tenants believed the oral agreement with the Landlords was that each tenant would only be responsible for their share ($500.00), no matter how many occupants lived in the Rental Unit. The Tenants stated that if the seventh room was ever rented, their share would not decrease, effectively making the rent $3,500.00.

[19] The Tenants stated that in the summer of 2023, the other three tenants started to vacate the Rental Unit. B.B., A.C., and K.D., remained in the Rental Unit and N.N. since moved into the Rental Unit. The Tenants stated that when the other tenants vacated, the Landlords expected that the Tenants would still pay $3,000.00 in rent each month. The Tenants stated that they realized at this point that the tenancy agreement was $3,000.00 for the full Rental Unit, and not a room rental as they believed. The Tenants stated that this was the reason they sought new co-tenants (S.H., and Y.T.).

[20] The Tenants stated that in April 2024, as a result of the on-going heating issue in the Rental Unit, the Tenants became aware of their rights as tenants. The Tenants stated that they were not aware of the restrictions around rent control, and that they may have been paying an unlawful rent increase throughout their tenancies. The Tenants stated that despite knowing the Rental Unit was advertised for $2,000.00, they agreed to pay $3,000.00, and stated they felt they did not have much choice, as they needed a place to live for school.

[21] The Tenants stated that they trusted the Landlords and liked the Rental Unit. The Tenants stated that each of them was responsible for 1/6th of the rent ($500.00). The Tenants stated that they have agreed amongst themselves that B.B., A.C., and K.D., would be entitled to a larger share of the compensation, because they paid more rent since September 2021. N.N. started paying rent in March 2023, S.H., started paying rent in June 2023, and Y.T. started paying rent in August 2023.

Issue ii. The additional compensation for breach

[22] The Tenants stated that the Rental Unit has had an on-going issue with heat. The Tenants stated that they noticed their December 2023 heating bill was much higher than normal. The Tenants stated that there were an additional two fill-ups in January 2024, and some rooms in the Rental Unit were not getting heat.

[23] The Tenants stated that they informed the Landlords, and one of the Landlords came to the Rental Unit and checked the heating system and pipes. The Tenants stated that they leave the heating system on "eco mode" and never change it.

[24] The Tenants stated that they asked the Landlords to have an efficiency test complete on the heating system. However, the test could only be completed if the oil tank was further topped up. The Tenants stated that the Landlords told them they had to pay for the top-up. The Tenants stated that after just paying two oil bills in the last one-and-a-half months, they could not afford another oil bill. The Tenants stated that if the Landlords paid for the oil top-up, and the test showed no issues, they would have reimbursed the Landlords.

[25] The Tenants stated that the Landlords are required to provide consistent and adequate heating. The Tenants stated that the Landlords are also required to repair and maintain the Rental Unit. The Tenants stated that the Landlords have failed to take the heating concerns seriously and, as a result, they have had to pay an unreasonable amount of money for heating. The Tenants are seeking $7,625.04 in compensation for the Landlords' breach of the Act and their failure to provide adequate heating, repairs, and maintenance for the Rental Unit.

Issues iii and iv. The security deposit and compensation exceeding the security deposit

[26] In response to the Landlords' submissions, the Tenants stated that they are not disputing the claims for the refill/top-up of the oil tank, and the cleaning fee. The Tenants stated that they are disputing the remaining claims.

[27] The Tenants stated that their submitted video shows a leaking toilet. The Tenants stated that they cannot be held responsible for the excessive water bill due to a leaky or malfunctioning toilet. The Tenants stated that the toilet is located in the basement of the Rental Unit and was never used.

[28] The Tenants stated that the handles for the appliances were broken due to normal wear and tear. The Tenants stated that the microwave is above the stove, so it is possible the heat from the stove weakened the handle, which is plastic. The Tenants stated that the handle for the refrigerator is not broken, but just removed and can easily be put back on. The Tenants stated that they did not break the appliances and after many years of six people using the appliances daily any damage is normal wear and tear.

[29] The Tenants stated that the broken window does not always stay up when it is open. The Tenants stated that they did not cause the damage to the window. The Tenants stated that they previously informed the Landlords about the broken window.

[30] The Tenants stated that they were not aware about the 5:00 p.m. vacate date, and could have returned the keys on May 1, 2024. The Tenants disputed owing 2-days of pro-rated May 2024 rent.

LANDLORDS' EVIDENCE AND SUBMISSIONS

[31] The Landlords submitted 50-pages of documents into evidence including: written submissions, a copy of the tenancy agreement, a May 2023 tenancy agreement, an August 2022 tenancy agreement, emails, text messages, a water consumption report, Feasible Fuels invoice, cleaning invoice, photographs, O'Connor Glass invoice, MacArthur's Appliances invoice, Feasible Fuels consumption reports for September 2022 to May 2023, and September 2023 to May 2024, and an email with Oil Heat 2000 Inc.

[32] The Officer requested and permitted the Landlords to submit additional evidence post-hearing. The Landlords submitted a finalized copy of the August 2020 former tenancy agreement, and the Landlords' very first tenancy agreement for the Rental Unit dated June 28, 2019.

Issue i. The unlawful rent increase

[33] The Landlords stated that the rent was never raised during the Tenants' tenancy agreement. The Landlords stated that the Tenants' Application is made under clause 75(1) of the Act and has a six-month limitation period. The Landlords stated that only the last two tenancy agreement are admissible evidence. The Landlords stated that the former tenancy agreements are from September 2021 and August 2022, which terminated before the six-month limitation period to file an application under clause 75(1).

[34] The Landlords submitted that to consider any other tenancy agreements except for the most recent two, would be unfair.

[35] The Landlords stated that the very first tenancy agreement was entered into with four other tenants on August 1, 2019. These tenants rented the entire Rental Unit, and the rent for the Rental Unit was $3,000.00.

[36] The Landlords stated that the four tenants vacated and that tenancy ended. On September 1, 2020, four new tenants entered into a fixed-term tenancy agreement for the entire Rental Unit, and the rent for the Rental Unit was $2,000.00. The Landlords stated that the reduction in the rent was because of the COVID-19 pandemic.

[37] The Landlords stated that on September 1, 2021, B.B., A.C., and K.D. moved into the Rental Unit. Three other tenants also moved into the Rental Unit and the rent was $3,000.00. The Landlords denied the Tenants' submission that there was an oral agreement that the Tenants' were only responsible for their room's share of the rent ($500.00). The Landlords stated that the Tenants rented the entire Rental Unit and $3,000.00 was due every month.

[38] The Landlords stated that the tenancy agreement signed reflected the monthly rent charged for the entire Rental Unit. The Landlords stated that the principles of contract law apply. The Tenants had a duty to mitigate. The Landlords stated that B.B., A.C., and K.D. knew about the rent increase since September 2021 and sat on it.

Issue ii. The additional compensation for breach

[39] The Landlords stated that the Rental Unit has a hot water boiler. The Landlords stated that they tried to work with the Tenants, and went to the Rental Unit to inspect. The Landlords stated that heat is the Tenants' responsibility, so if they paid to top up the oil, then the efficiency test could have been completed. The Tenants did not want to pay for it. The Landlords stated that after the Tenants vacated, the efficiency test was complete, and there were no issues with the hot water boiler.

[40] The Landlords stated that there were two top-ups in December 2023, and one was paid. Another top-up happened in January 2024. The Tenants stopped paying the oil. The Landlords stated that they paid the outstanding balance on the oil account.

[41] The Landlords referred to their written submissions (pages 73-74 of the EP).

Issues iii and iv. The security deposit and compensation exceeding the security deposit

[42] The Landlords are seeking to retain the full amount of the security deposit and compensation exceeding the security deposit, in the amount of $1,016.54.

[43] The Landlords stated that the Tenants are responsible for electricity, water, heat, professional cleaning, and an oil tank top-up at the end of the tenancy. The Tenants also caused undue damage to the Rental Unit beyond normal wear and tear.

[44] The Landlords' expenses are as follows:

- Water bill: $812.48;
- Oil top-up: $1,039.40;
- Professional clean: $1,035.00;
- Repair of broken windowpanes: $671.61;
- Repair of broken appliance handles: $264.50; and
- Two days' prorated rent for May 2024: $193.55.

[45] The Landlords stated that the running toilet caused a larger than normal hydro bill. The Landlords stated that the noise from the toilet was loud enough that the Tenants ought to have known, and neglected to inform the Landlords. The Landlords stated that they became aware on April 8, 2024 when the City sent them an email regarding higher-than-normal water consumption (page 93 of the EP). The Landlords received the water bill on April 27, 2024 (page 96 of the EP).

[46] The Landlords stated that according to the tenancy agreement, the Tenants were required to top-up the oil tank before they vacated the Rental Unit. The Landlords stated that the Tenants did not, so the Landlords arranged for it to be filled.

[47] The Landlords stated that according to the tenancy agreement, the Tenants were required to have the Rental Unit professionally cleaned before they vacated. The Landlords stated that it was not cleaned, so the Landlords arranged for the cleaning.

[48] The Landlords stated that, prior to the Tenants moving into the Rental Unit, the window panes were in good working condition. The Landlords stated that the broken windowpanes are not reasonable wear and tear. The Landlords stated that O'Connor Glass inspected the Rental Unit and discovered two additional panes were broken. The Landlords stated that the Environmental Health Officer concluded in the Report that the Landlords were responsible for ensuring that the windowpanes were repaired. The Landlords stated that the Environmental Health Officer does not have the jurisdiction to determine whether this is a security deposit expense.

[49] The Landlords stated that the Tenants broke the fridge, fridge-freezer, oven and microwave door handles, and the microwave vent cover. The Landlords stated that they needed to replace the entire oven as the handle could not solely be replaced. The Landlords stated that this is beyond normal wear and tear.

[50] The Landlords referred to their written submissions (page 72-73 of the EP). The Tenants did not move out until May 2, 2024. The Landlords stated that they are entitled to two-days of pro-rated May 2024 rent.

ANALYSIS

What Law Applies & the Statute of Limitations

[51] The Applications were filed in accordance with subsection 75(1) of the Act. The Tenants' Application includes six tenants who moved into the Rental Unit at different times. The Tenants' Application has two issues, and one of those issues (Issue i.) alleges a contravention which started in September 2021.

[52] The evidence establishes that the (six) Tenants moved into the Rental Unit as follows:

- September 2021: B.B., A.C., and K.D.
- March 2023: N.N.
- June 2023: S.H.
- August 2023: Y.T.

[53] The alleged contravention spans the period of time of September 2021 to May 2024. Three of the six tenants have alleged the contravention started September 2021. In such circumstances, subsection 112(2) of the Act provides guidance, it states:

> ***Division 5 – Transitional and Consequential Provisions***
>
> ***112.***
>
> ***Transitional – contravention***
>
> *(2) A contravention of a provision of the former Act that occurred before the coming into force of this Act, but in respect of which no application, hearing or other proceeding was started before the coming into force of this Act, may be dealt with under the former Act as though that Act were still in force.*

[54] The Officer finds that four of the Tenants (B.B., A.C., K.D., and N.N) have a claim that should be determined in part under the *Rental of Residential Property Act* (the "Former Act"). The alleged contravention occurred for these four tenants, before the Act came into force (April 8, 2023). The Officer notes that the tenancy agreement signed in May 2023, includes N.N., however, the testimony from the parties establishes that N.N. moved into the Rental Unit in March 2023.

[55] S.H., and Y.T. moved into the Rental Unit after the Act came into force. Therefore, S.H. and Y.T.'s claim must be determined under the Act.

[56] The remaining issues (Issues ii, iii and iv.) of the Applications are matters to be determined under the Act.

[57] The Officer notes that part of the Landlords' submissions were that the Tenants' Application should be limited to claims arising from the tenancy agreement signed in August 2023. The Landlords submitted that the limitation period in subsection 75(1) prohibits a claim after six months from the termination of a tenancy agreement. The Landlords submit that the tenancy agreement signed in May 2023, and all preceding tenancy agreements were terminated and, as a result, inadmissible as evidence.

[58] Subsection 75(1) of the Act states:

> ***75. Application to determine disputes***
>
> *(1) Except as otherwise provided in this Act, a tenant, a landlord or a person representing a tenant or landlord may, during or within six months after termination of a tenancy agreement, make an application to the Director to determine*
>
> *(a) a question arising under this Act or the regulations;*
>
> *(b) whether a provision of a tenancy agreement has been contravened; or*
>
> *(c) whether a provision of this Act or the regulations has been contravened.*

[59] Regarding Issues ii, iii, and iv, there is no dispute that these matters must be determined under the Act. The Officer finds that the tenancy ended May 2, 2024 and that the Tenants filed the Tenants' Application on May 3, 2024. Therefore, the Tenants are not statute-barred from the Tenants' Application for a determination of a contravention of the Act.

[60] Regarding Issue i., however, the Officer finds that the Former Act applies for the determination of this matter, as it relates to B.B., A.C., K.D., and N.N up to April 7, 2023. The Former Act does not contain a limitation period for applying to the Rental Office. In Order LR22-21 the Island Regulatory and Appeals Commission (the "Commission") determined the limitation period under the Former Act:

"*As explained in Director's Order LD22-068, 2(1)(g) of the Statue of Limitations applies:*

(1) The following actions shall be commended within and not after the times respectively hereinafter mentioned:

…

(g) any other action not in this Act or any other Act specifically provided for, within six years after the cause of action arose.

Mr. and Ms. King state that a limitation period of only six years is unfair to long-term tenants. The six-year time limitation set out in the Statute of Limitations is part of the statute law of the Province of Prince Edward Island and cannot be changed by the Director or the Commission. The Commission agrees with the finding of the Director that the Kings are statute-barred from making their claim."

[61] **The Officer finds that the six-year limitation period from the *Statute of Limitations* applies to the Former Act. In this case, the Officer finds that the Tenants, specifically, B.B., A.C., K.D., and N.N. brought their claim forward within the six-year limitation period.**

[62] Therefore, the Officer finds that the Tenants' Application, specifically, Issue i., with regard to B.B., A.C., K.D., and N.N. has been filed within the six-year limitation period and must be heard on its merits from the start dates of the alleged contraventions (September 1, 2021 and March 1, 2023) under the Former Act.

Issue i. Are the Tenants entitled to recover rent due to an unlawful increase?

[63] The evidence establishes that the Rental Unit was purchased by the Landlords in July 2019. Beginning August 1, 2019 the Landlords rented the Rental Unit to four tenants and charged $3,000.00 per month for rent. On August 1, 2020 the Landlords re-rented the Rental Unit to four new tenants and charged them $2,000.00 per month for rent. The Landlords stated that they reduced the monthly rent due to the uncertainty in the rental market because of the on-going COVID-19 pandemic.

[64] On September 1, 2021 B.B., A.C., K.D., and three other tenants moved into the Rental Unit. Rent was $3,000.00 per month. B.B., A.C., and K.D., stated that at the time they believed that they were only responsible for their share of the rent ($500.00 per room). In August 2022, the parties renewed their tenancy agreement, all the terms and conditions remained the same.

[65] Between the summer of 2022 and 2023 the other three tenants vacated the Rental Unit. In March 2023, N.N. moved into the Rental Unit, and was included in the May 2023 tenancy agreement, all the terms and conditions remained the same.

[66] In the summer of 2023, the other remaining tenants moved out of the Rental Unit. The Tenants stated that after a conversation with the Landlords, they became aware that they were responsible for the total $3,000.00 rent each month, and not just $500.00 each. The Tenants stated that this is why they found S.H., and Y.T. to assist in covering the rent. Despite the differing opinions regarding the Tenants' share for rent each month, the evidence establishes that the tenancy was for the entire Rental Unit and that rent was $3,000.00 for the entire Rental Unit. **This is consistent with the June 28, 2019 tenancy agreement where only four tenants occupied the Rental Unit, but were still charged $3,000.00 in rent.**

[67] Prince Edward Island is a rent controlled jurisdiction and this has not changed from the Former Act to the Act. With regard to the Former Act, the Commission summarized this province's rent control scheme in Order LR19-15:

> "*In Prince Edward Island, the Rental of Residential Property Act (the "Act") provides for a system of rent control whereby rent runs with the residential unit. When a lessee surrenders possession of that unit to the lessor, that rate of rent still remains fixed to that unit. This rent applies to a subsequent lessee even if the unit has been vacant between the tenancies.* ***Any agreement as to the amount of rent reached between lessor and lessee is null and void to the extent that it runs contrary to the rent control provisions of the Act.***
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> *To balance out the rigours of rent control, Part IV of the Act sets out the process whereby rent increases may lawfully be made. If a lessor raises the rent of a unit without first following the process set out in Part IV of the Act, such an increase is illegal.*
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> *As there is no evidence that this rental increase was approved under Part IV of the Act, the Commission finds that the Appellant illegally increased the rent of 39 Rankin Court from $800.00 per month to $1500.00.*
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> *Both the Appellant and Mr. Wang pleaded lack of knowledge as to the quantum of the previous rent and lack of familiarity as to the requirements of the Act. Mr. Wang's testimony appeared to deflect blame to others.* ***Lack of familiarity of the Act does not in any way mitigate the requirements of the Act***." [emphasis added]

[68] In this case, the Officer finds that the evidence establishes that the original rent for the Rental Unit in 2019 was $3,000.00. Then, in September 2020, the Landlords reduced the rent for the Rental Unit to $2,000.00 due to the COVID-19 pandemic. However, in September 2021, the Landlords increased the rent for the Rental Unit back to $3,000.00 for B.B., A.C., K.D., and the three other former tenants. The rent remained $3,000.00 for the subsequent tenancy agreements.

[69] The Commission in Order LR22-18 has dealt with this issue regarding rent control and landlords reducing the rent. The Commission stated:

> "*The Commission accepts that the rent for the Premises was initially $1,400 per month, but that rate was then reduced. While the Appellants may have requested rent higher than $1,200.00 per month from the tenants immediately prior to the Respondents, the Appellants deposited the post-dated cheques as they came due and thus are deemed to have accepted rent at $1,200 per month.* ***Unfortunately for the Appellants, such acceptance established the rent for the Premises at $1,200.00 per month and no application was made to the Director to lawfully increase the rent prior to the Respondents leasing the Premises***." [emphasis added]

[70] **The Officer finds the Commission made it clear in Order LR22-18 that once a landlord reduces the rent and accepts payment, the reduced rent is now the established rent for the premises (now referred to as the rental unit). The Officer notes that a similar finding was also made many years ago by the Commission in Order LR09-11.**

[71] In this case, the Landlords reduced the rent to $2,000.00 in 2020, and for the entire length of that tenancy (until August 2021), the Landlords accepted $2,000.00 in rent payments every month. The Officer notes that if the Landlords wanted a 50% increase to return the rent back to $3,000.00 then the Landlords would have had to apply to the Rental Office for a "greater than allowable rent increase". The evidence establishes that the Landlords did not make such an application.

[72] The Officer finds based on the foregoing analysis that the Landlords did not comply with the rent control provisions prescribed in Part IV of the Former Act.

[73] The Tenants, namely, B.B., A.C., K.D., and N.N. are entitled to the return of rent for the unlawful rent increase that they have paid throughout their tenancies. The calculations are listed further in the decision.

[74] S.H., and Y.T. moved into the Rental Unit in June 2023 and August 2023. The Officer notes that on April 8, 2023, the Executive Council of Prince Edward Island proclaimed the Act, and thus repealed the Former Act. This means as of April 8, 2023, the Act is the law regarding residential landlord and tenant disputes on Prince Edward Island.

[75] S.H., and Y.T., moved into the Rental Unit and started their tenancies after the Act became law. This means that S.H. and Y.T. are not subject to the transitional provisions, and their claim(s) must be determined under the Act.

[76] Rent control has existed in Prince Edward Island for over thirty years. The law regarding rent control has only become stricter under the Act. The Officer has already found that the established legal rent for the Rental Unit is $2,000.00. As a result, the Officer finds that the Landlords have not complied with the rent control provisions prescribed in PART 3 of the Act.[1] S.H., and Y.T. are entitled to recover the unlawful rent increase that they have paid throughout their tenancies. The calculations are listed below.

Mitigation

[77] The Landlords argued that the Tenants had a duty to mitigate their losses under contract law and that the Tenants should have applied to the Rental Office and brought their claim sooner. The Tenants disputed the Landlords' argument, by stating that they only became aware of their rights and the rules around rent control in April 2024. The Tenants stated that due to the heating issues, they contacted the Rental Office about their rights and through that process they became aware of rent control.

[78] B.B., A.C., and K.D. stated that they were aware of the $2,000.00 rent advertisement for the Rental Unit. However, the Tenants accepted the $3,000.00 rent because they liked the Rental Unit, needed a place to live for school, and trusted the Landlords.

[79] Both the Former Act (section 29) and the Act (section 46) require a landlord to mitigate losses when a tenant abandons a rental unit.

[80] In Order LR20-39 the Commission defined mitigation and provided an in-depth analysis of the duty to mitigate, stating:

> "*The duty to mitigate is an established principle in contract law, and arises in the context of assessment of damages for breach of contract. The general rules for the assessment of damages for breach of contract was outlined in Keneric Tractor Sales Ltd. v. Langille et al., [1987] 2 S.C.R. 440, which held that the award should put the plaintiff in the position he would have been in had the defendant fully performed his/her contractual obligations.*
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> *The duty to mitigate was further explained by the Supreme Court of Canada in Red Deer College v. Michaels et al., [1975] D.L.R. (3d) 386 at p.390 (S.C.C.). The primary rule in breach of contract cases, that a wrong plaintiff is entitled to be put in as good a position as he would have been if there had been proper performance by the defendant, is subject to the qualification that the defendant cannot be called upon to pay avoidable losses which would result in an increase in the quantum of damages payable to the plaintiff. The reference in the case law to a "duty" to mitigate should be understood in this sense.*
>
> *This common law duty to mitigate when a breach of contract has occurred prevents plaintiffs from simply doing nothing and thereby accumulating losses.*

[1] See clauses 47(1), (2) and 50(1) of the Act

> *In addressing the lessor's duty to mitigate under section 29 of the Act, the Commission finds that the adequacy of mitigation, not just whether or not mitigation occurred, may be considered. The quantum of the claim and the remaining duration of the rental agreement are relevant facts to consider when addressing the adequacy of mitigation. What may be considered reasonably efforts to mitigate for a small claim or a short period of time may be lacking for a large claim or an extended period of time.*"

[81] Further, in Order LR22-27 the Commission made reference and reaffirmed their position regarding the duty to mitigate outlined in Order LR20-39.

[82] In both of the above cases, along with the provisions of the Former Act and the Act, the duty to mitigate is directed at the landlord. However, the principles of contract law also require that a tenant also has a duty to mitigate their losses when required.

[83] In some cases, a tenant may have greater knowledge than a landlord of the rent history for a rental unit. For instance, a long-term tenant may be aware of an unlawful rent increase that a new purchaser of the rental unit does not know. In these circumstances, the long-term tenant would have a duty to make the new purchaser aware of the earlier unlawful rent increase in order to mitigate losses.

[84] In this case, the Landlords owned the Rental Unit for over two-years before three of the Tenants moved in. The Landlords had greater knowledge of the rent history than the Tenants. In these circumstances, it does not appear that the Tenants did not fulfill their duty to mitigate.

[85] Unlike the facts in Order LR19-15, the Landlords knew that the rent for the Rental Unit was $3,000.00, re-rented the Rental Unit for $2,000.00 in the COVID-19 pandemic, and accepted payment of the reduced rent. The Landlords then advertised the Rental Unit for $2,000.00 in 2021, but with agreement by the Tenants, increased the rent to $3,000.00. The Tenants then paid $3,000.00 for the Rental Unit every month for the entirety of their tenancies beginning in September 2021.

[86] The Officer finds the Landlords had a duty under the Former Act and the Act to comply with the rent control provisions. Any lack of familiarity of the Former Act, and/or the Act does not, in any way, mitigate the requirements of the law. Further, the Landlords cannot pass their burden of complying with rent control onto the Tenants via the duty to mitigate. The Tenants brought their claim(s) forward once they were aware of their ability to do so. The Tenants would not have known if the Landlords had previously applied to the Rental Office to receive an authorized rent increase. The Landlords have the burden to ensure they are in compliance with rent control.

[87] The Officer finds that in this case, the Tenants have not failed their duty to mitigate. The claim is allowed for the Tenants' Application.

[88] The established legal rent for the Rental Unit is $2,000.00.[2]

[89] By operation of law, the maximum allowable security deposit that could be held by the Landlords is $2,000.00.[3] The overpayment is addressed in the calculations below.

[2] Clause 85(1)(e) and (p) of the Act, and Clause 8(f) of the Former Act

[3] Clause 14(3) of the Act.

[90] The calculations for the recovery of the unlawful increases are as follows:

The Tenants	The duration of tenancy	The amount owed
B.B.	$166.67 x 32 months	$5,333.44 (24.6%)
A.C.	$166.67 x 32 months	$5,333.44 (24.6%)
K.D.	$166.67 x 32 months	$5,333,44 (24.6%)
N.N.	$166.67 x 14 months	$2,333.38 (10.8%)
S.H.	$166.67 x 11 months	$1,833.37 (8.5%)
Y.T.	$166.67 x 9 months	$1,500.03 (6.9%)
Total amount:	September 2021 – April 2024	$21,667.10 (100.0%)

Issue ii. Are the Tenants entitled to additional compensation?

[91] The Tenants are seeking $7,625.04 in compensation for the Landlords' contravening subsections 28(1) of the Act, and 8(1) and (3) of the *Public Health Act Rental Accommodation Regulations*. The relevant law states:

> ***28. Obligation to repair and maintain***
> *(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.*
>
> ***8. Heating***
> *(1) All buildings and dwelling units shall be weather-proof and capable of being adequately heated with a reasonable consumption of fuel and the heating equipment in any building or dwelling shall be in working order and in good repair.*
>
> ***Minimum temperature***
> *(3) All buildings and dwelling units in which the heat is supplied by the owner shall have a temperature of not less than 65 F at all times in each apartment or dwelling unit by means of a heating system approved by the Fire Marshal or an inspector under the Fire Prevention Act*.

[92] For reasons below, the Officer finds that the Tenants have not established that the Landlords contravened the Act or the *Public Health Act Rental Accommodations Regulations*.

[93] The evidentiary record establishes that the Tenants informed the Landlords of an issue with the heating system. The Landlords went to the Rental Unit and inspected the issues. The Tenants requested an efficiency test; however, the test required another top-up for the oil. The parties disagreed on who would pay for this and the test was not complete during the tenancy. After the tenancy ended, the efficiency test was completed, with no issues found.

[94] The Officer finds that the evidence does not establish that the Landlords failed to repair and maintain the Rental Unit, specifically the heating system. The Landlords were justified in requesting the Tenants pay for the oil top-up as it is the Tenants' responsibility as a term of the tenancy agreement. Despite the Tenants' hesitation to pay what would be a third oil bill in a month, it was still the Tenants' responsibility to top-up the oil bill. Further, the Officer finds that the Tenants' documentary evidence does not establish that the heat for the Rental Unit was below 65 F as a result of the Landlords' failure to maintain and/or repair the heating system. This claim is denied.

Issues iii and iv. The security deposit and compensation exceeding the security deposit?

[95] The Landlords' Application is filed in accordance with clause 75 of the Act and seeks to make a claim against the security deposit, pursuant to clause 40(1) of the Act. Further, the Landlords' Application seeks an order for additional compensation above the total amount of the security deposit. Clause 40(1) of the Act states:

> ***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.*

[96] Further, clauses 19(1), 39(2), 85(1)(d), and (j) of the Act state:

> ***19. Tenant shall pay rent when due***
> *(1) A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has express right under this Act to deduct or withhold all or a portion of the rent.*
>
> ***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.*
>
> ***85. Powers of the Director***
> *(1) After hearing an application, the Director may make an order*
> *(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.*
> *(j) determining the disposition of a security deposit, including*
> *(i) authorizing a tenant to offset, in the manner specified in the order, money a landlord owes to the tenant against money the tenant owes to the landlord, and*
> *(ii) authorizing a landlord to offset, in the manner specified in the order, money a tenant owes to the landlord against money the landlord owes to the tenant, other than a security deposit where the landlord has not made an application under clause 40(1)(b).*

[97] The Officer finds that the Landlords have already been ordered to return the $1,000.00 overpayment of the security deposit. The remaining balance of the security deposit will be considered in the Landlords' Application. The Landlords are seeking $4,016.54 in total compensation.

THE CLAIMS

1. Outstanding water bill in the amount of $812.48

[98] The Officer finds that the Landlords have established a valid claim for $812.48. The Officer finds that the tenancy agreement details that hydro is the Tenants' responsibility. Further, the hydro bill submitted into evidence is for the period of January 8, 2024 to April 7, 2024 (96 of the EP). This period of time is during the tenancy. The Officer finds that the Landlords' evidence establishes that the Tenants knew or ought to have known that one of the Rental Unit's toilets was not properly working. This claim is allowed.

2. Oil top-up bill in the amount of $1,039.40

[99] The Officer finds that the Landlords have established a valid claim for $1,039.40. The Tenants are also not disputing this claim, and the Landlords have provided sufficient documentary evidence. This claim is allowed.

3. Professional cleaning in the amount of $1,016.54

[100] The Officer finds that the Landlords have established a valid claim for $1,016.54. The Officer notes that generally a reduction of such an expense is appropriate, as the Tenants are only responsible for a reasonably clean Rental Unit, and not a professionally clean Rental Unit. However, the Tenants are not disputing this claim. Based on the evidence submitted, and that the Residential Property is large, the Officer permits the 36-hours of cleaning. The claim is allowed.

4. Repair of broken windowpanes in the amount of $671.61

[101] The Officer finds that the Landlords have not established a valid claim for the broken windowpanes. The Officer notes that the Tenants disputed this expense and denied causing any damage to the windowpanes. The Tenants stated that if the windows were open, then they needed an item to hold them up and the wind would cause them to fall/close. The Officer finds that the Landlords have not established that the actions or the negligence of the Tenants caused undue damage to the windowpanes. This claim is denied.

5. Repair of broken appliances' handles in the amount of $264.50

[102] The Officer finds that the Landlords have established a valid claim for $264.50. The Tenants stated that this was normal wear and tear after many years of six tenants open and closing the appliances doors. The Officer finds that the damage to the appliances is beyond normal wear and tear. The Officer notes that the Landlords stated that the appliances were purchased in 2020. The Officer finds that appliances have a much longer life expectancy than 4 years. This claim is allowed.

6. Pro-rated rent for two days in May 2024 in the amount of $193.55

[103] The Officer finds that the Landlords have established a valid claim for two days of pro-rated rent for May 2024. The Officer finds that the Tenants vacated the Residential Property and returned the keys on May 2, 2024. Rent is due on the first day of the month, so the Tenants owe for the two days which they continued to occupy and possess the Rental Unit. However, the Officer adjusts the pro-rated rent to reflect the $2,000.00 legal rent. The Landlords are entitled to $129.03 (2 days / 31 days' x $2,000.00). The claim is allowed, in part.

[104] The Landlords have proven that they are entitled to $3,261.95. The Landlords' Application is allowed in part. This balance will be off-set with the Tenants' monetary claim awarded in the Tenants' Application. The calculations are below.

CONCLUSION

[105] The Tenants' Application is allowed in part.

[106] The Landlords' Application is allowed in part.

[107] The calculations are as follows:

Item	**Amount**
Return of rent	$21,667.10
Total security deposit and interest	$3,115.87
Total Tenants' compensation	**$24,782.97**
Less total Landlord compensation set-off	($3,261.95)
Total amount owed to the Tenants after set-off	**$21,521.02**

[108] The Tenants are entitled to $21,521.02, in total compensation.

[109] The calculation for the Tenants share of the compensation after the set-off is as follows:

Tenant	**Share of compensation**
B.B.	$5,294.17 (24.6%)
A.C.	$5,294.17 (24.6%)
K.D.	$5,294.17 (24.6%)
N.N.	$2,324.27 (10.8%)
S.H.	$1,829.29 (8.5%)
Y.T.	$1,484.95 (6.9%)

[110] Rent for the Rental Unit is set at $2,000.00 per month. This amount is fixed and can only be increased by following the process set out in the Act.

IT IS THEREFORE ORDERED THAT

I. **The Landlords shall pay the Tenants $21,521.02 by October 1, 2024.**

II. **Rent for the Rental Unit is set at $2,000.00 per month. This amount is fixed and can only be increased by following the process set out in the Act.**

DATED at Charlottetown, Prince Edward Island, this 26th 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.