

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 3, 2024, the Tenants filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Tenant Application”) with the Residential Tenancy Office (the “Rental Office”), requesting a return of the of the security deposit. A copy was emailed to the Landlord on June 1, 2024.
- [3] On June 11, 2024, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “Landlord Application”) with the Rental Office seeking compensation for unpaid utilities and cleaning. A copy was emailed to the Tenants in June 13, 2024.
- [4] On July 16, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenants, a Tenant witness, a Landlord representative (the “Representative”), and a Landlord witness participated in the hearing.

ISSUES

- i. Are the Tenants entitled to a return of the security deposit?
- ii. Is the Landlord entitled to compensation?

SUMMARY OF THE EVIDENCE

- [5] On May 5, 2023, the parties entered into a written fixed-term tenancy agreement for the Unit, for the period of May 5, 2023, to April 30, 2024. The Unit is a room with shared common spaces in a seven-unit building (the “Residential Property”). Rent was \$1,250.00 due on the first day of the month. A security deposit of \$1,500.00 was paid and the \$250.00 overpayment was discounted from the April 2024 rent. The Tenants vacated on April 30, 2024, by mutual agreement, as the fixed-term had ended.

TENANTS’ EVIDENCE AND SUBMISSIONS

- [6] The Tenants’ evidence is summarized as follows. The Tenants paid \$1,500.00 for the security deposit and later realized they had overpaid by \$250.00, as rent was only \$1,250.00. The Landlord reduced the rent for April 2024 by \$250.00 to offset the overpayment. The Tenants are seeking a return of the \$1,250.00 security deposit as they dispute they owe the Landlord for utilities or cleaning.
- [7] The tenancy agreement stated the Tenants had a cap of \$100.00 per month for electricity and \$100.00 per month for heat. During the tenancy the Representative never told the Tenants that they had ever gone over their monthly cap. It was not until the Tenants were vacating that the Representative told the Tenants that they owed money for utilities.
- [8] The Tenants disputed that the Representative’s calculations for the outstanding utilities are correct. The calculations average the cost of the utilities for the entire Residential Property and do not show the usage just for the Unit. There are other units in the Residential Property which are bigger than the Unit and those units should be paying more for utilities.
- [9] The Tenants disputed that they should have to pay for cleaning the Unit. The Tenants submitted a video into evidence from before they vacated and they stated the Unit and the common spaces were clean.
- [10] The Tenant’s witness stated he lived in the Residential Property during the same time period as the Tenants. The witness stated the Representative also waited until after the witness had vacated before asking him to pay his portion of the utilities.

LANDLORD'S EVIDENCE AND SUBMISSIONS

- [11] The Representative's evidence is summarized as follows. The Representative lives in one of the rooms in the Residential Property. Each unit in the Residential Property has their own thermostat for heat but the Residential Property just has one furnace. The Representative only gets one oil bill and one electricity bill for the entire property and not for each unit.
- [12] The Representative allocates each unit a certain number of "spaces" depending on the unit's size plus the common spaces. The four ensuites are 1.25 spaces each, the 3-bedroom is four spaces, the 2-bedroom is three spaces, and the 1-bedroom Unit is two spaces, for a total of 14 spaces (7 rooms).
- [13] When a tenant vacates, the Representative calculates what is owed by adding up the utility bills for the Residential Property during the tenancy period. He then divides the total by seven units, then divides by 14 spaces, and multiplies by the number of spaces allocated for that unit, to determine the average monthly bills for fuel and electricity.
- [14] The Representative then adds the monthly average of the fuel and electricity bills and deducts the monthly caps allowed. That number is then multiplied by the number of months of the tenancy, which gives the total owed by that tenant. If there are bills outstanding, the Landlord retains some or all of the security deposit to pay for the outstanding bills.
- [15] For the 12-month period the Tenants were living in the Unit, the Tenants exceeded their cap for oil by an average of \$107.39 per month and electricity by an average of \$44.09 per month, totaling \$1,817.82. When the security deposit is deducted the Tenants owe \$567.82. The Representative submitted a copy of his calculations into evidence as well as copies of the electricity bills and a summary of the fuel bills.
- [16] After the Tenants vacated the Representative hired a cleaner to clean the Unit. The cleaner sent the Representative a bill for \$175.00 and he trusts the cleaner did what was required and charged the appropriate amount for cleaning.
- [17] The Landlord's witness stated he was a tenant in the Residential Property during the time the Tenants lived there. The Landlord's witness stated he told the Tenants how the billing for the utilities was calculated when the Tenants were vacating. Copies of videos of the Landlord's witness explaining the calculations to the Tenants were submitted into evidence.

ANALYSIS**Issue i: Are the Tenants entitled to a return of the security deposit?**

- [18] The relevant law is as follows:

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.*

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.*

[19] The evidence establishes that the tenancy ended on April 30, 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 (May 15, 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).

Issue ii: Is the Landlord entitled to compensation?

Cleaning

[20] The relevant law is as follows:

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.*

[21] The Landlord is claiming a cleaning fee in the amount of \$175.00. The Officer notes that upon vacating, a tenant is responsible to leave a rental unit reasonably clean but they are not responsible to clean to a higher standard, such as move-in ready condition for the next tenants.

[22] The Tenants submitted a video showing the condition of the Unit upon moving out. No photographic or documentary evidence showing the condition of the Unit was submitted by the Landlord. Based on the submitted evidence, the Officer finds that the Landlord has not established that the Unit was left in a state below reasonably clean when the Tenants vacated.

Utility bills

[23] The Landlord is claiming \$1,817.82 in unpaid utility bills. The tenancy agreement states that the Landlord is responsible for paying heating and electricity up to \$100.00 per month for each, and the total should not be more than \$200.00 per month. There was no evidence submitted that the Tenants were told that they had exceeded their cap any time during the tenancy.

[24] The Representative stated he only receives one electricity bill and one fuel bill for the seven units in the Residential Property. When calculating what tenants owe, he averages the entire bills for the tenancy period and then makes calculations based on the size of the unit and the allowed monthly cap.

- [25] The Officer finds that the Representative's method of calculating the utilities only determines the average of the bills for the entire Residential Property over a tenancy period. This calculation cannot accurately determine the electricity or fuel used by the Unit each month or if the Tenants had exceeded their allotted monthly cap. The Officer finds that based on the evidence presented, the Landlord has not established that the Tenants owe the Landlord for unpaid utilities.

CONCLUSION

- [26] The Tenant Application is allowed and the Landlord Application is denied.
- [27] The Landlord must pay the Tenants double the security deposit plus interest on the principal amount, totaling \$2,542.67, by the timeline below.
- [28] This Order will be served to the parties by e-mail.
- [29] The calculations are as follows:

<u>Item</u>	<u>Amount</u>
Security Deposit	\$1,250.00
Interest on \$1,500.00 (May 3/23– April 1/24)	\$33.45
Interest on \$1,250.00 (April 2/24 – July 31/24)	\$9.22
Double the Security Deposit	\$1,250.00
Total	\$2,542.67

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenants \$2,542.67 by August 20, 2024.

DATED at Charlottetown, Prince Edward Island, this 31st day of July, 2024.

(sgd.) Mitchell King

Mitchell King
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.