

**INTRODUCTION**

- [1] The Tenants seek a monetary Order against the Landlord for double the security deposit plus interest on the original security deposit. The Landlord seeks a monetary Order for damage to the Unit.

**DISPOSITION**

- [2] I find that the Landlord must pay the Tenants double the security deposit plus interest on the original security deposit, in the total amount of \$4,266.35. The Landlord's \$500.00 damage claim is denied.

**BACKGROUND**

- [3] On June 14, 2023 the parties entered into a written, fixed-term tenancy agreement for the period of August 1, 2023 to August 1, 2024. On June 14, 2023 the Tenants paid a \$2,100.00 security deposit to the Landlord. Rent in the amount of \$2,100.00 was due on the first day of the month.
- [4] On July 31, 2024 the Tenants vacated the Unit. The Tenants had previously notified the Landlord that they would be moving out.
- [5] On September 4, 2024 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Tenants' Application") with the Residential Tenancy Office (the "Rental Office"). The Tenants' Application seeks compensation for double the security deposit plus interest on the original security deposit.
- [6] On September 17, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for October 10, 2024, along with a copy of the Tenants' Application.
- [7] On October 8, 2024 the Rental Office emailed the parties an evidence package (the "Evidence Package" or "EP").
- [8] On October 10, 2024 the Tenants and the Landlord's representative participated in a teleconference hearing for determination of the Tenants' Application. At the hearing the Landlord was permitted to file an application regarding the wall damage invoice and photographic evidence in the Evidence Package, to be determined together with the Tenants' Application.
- [9] On October 10, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* with the Rental Office regarding the wall damage claim in the Evidence Package (the "Landlord's Application"). The Tenants were provided an opportunity to respond to the Landlord's Application.

**ISSUES**

- A. Must the Landlord pay double the security deposit plus interest to the Tenants?
- B. Has the Landlord established a valid damage claim?

**ANALYSIS****A. Must the Landlord pay double the security deposit plus interest to the Tenants?**

- [10] For the reasons below, I find that the Landlord must pay the Tenants double the security deposit plus interest on the security deposit.
- [11] Section 40 of the *Residential Tenancy Act* (or 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.

- [12] The evidence establishes that the tenancy agreement ended on or about July 31, 2024. The Landlord did not return any of the \$2,100.00 security deposit to the Tenants within 15 days (by August 15, 2024). The Landlord did not file an application with the Rental Office to retain the security deposit within fifteen days.
- [13] There are no earlier Rental Office decisions authorizing the Landlord to retain the Tenants' security deposit. At the end of the tenancy the parties did not enter a written agreement permitting the Landlord to retain the security deposit.
- [14] As a result, I find that the Landlord did not comply with the section 40 requirements for retaining a security deposit. Therefore, by operation of law, the Landlord must pay the Tenants double the security deposit plus interest on the security deposit balance in accordance with subsection 40(4), as calculated below.

**B. Has the Landlord established a valid damage claim?**

- [15] Clause 39(2)(a) of the *Act* states:

*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...*

- [16] The parties agreed that the Unit was new at the beginning of the tenancy agreement. The parties submitted into evidence photographs taken on September 9, 2024, over a month after the tenancy ended. The Tenants stated that part of the wall damage shown in the photographs was due to the removal of stickers from the bedroom walls.
- [17] The parties did not complete written move-in or move-out condition inspection reports as required by sections 18 and 38 of the *Act*. These types of reports can assist in the resolution of disputes and provide relevant evidence for Rental Office proceedings.

- [18] I have reviewed the evidence provided, particularly the photographs submitted into evidence by the parties. I am not satisfied that the damage shown in the photographs exceeds reasonable wear and tear for a one-year tenancy.
- [19] I also note that the Landlord's wall damage invoice (EP12 and 20) from a related company provides limited information. The invoice does not provide a breakdown of the labour and materials cost. The invoice does not state the number of hours worked by the painter or the painter's hourly cost.
- [20] The Landlord submitted a photograph showing a small amount of mould near a door (EP28). On the evidence presented I cannot find that this was mould was caused by the Tenants.
- [21] The Landlord's Application is denied.

### Tenancy Agreement Form

- [22] I note that the Landlord prepared a *Standard Form of Rental Agreement (Form 1)*, which is an outdated form prescribed under the former rental legislation, the *Rental of Residential Property Act*.
- [23] The current *Standard Form of Tenancy Agreement (Form 1)*, based upon the *Residential Tenancy Act*, is available online in the forms section of the Rental Office's website.
- [24] The *Residential Tenancy Act* has been in force since April 8, 2023 and the tenancy agreement commenced over three months later. The Landlord must use tenancy agreement forms that comply with the current legislation.
- [25] In particular, subsections 11(1) and (2) include the following requirements:
- (1) *A landlord shall prepare a written tenancy agreement in respect of a tenancy that is entered into on or after the date this Act comes into force.*
  - (2) *The landlord shall ensure that the tenancy agreement complies with the requirements of this Act and the regulations and includes*
    - (a) the provisions set out in Division 4;*
    - (b) the correct legal names of the landlord and tenant;*
    - (c) the address of the rental unit;*
    - (d) the date the tenancy agreement is entered into;*
    - (e) the address for service and telephone number of the landlord, or the landlord's agent, and the tenant;*
    - (f) the services and facilities included in the rent;*
    - (g) the amount of rent that was charged, and the services and facilities that were provided, to the previous tenant of the rental unit, unless there was no previous tenant;*
    - (h) the name and contact information of any person the tenant is to contact for emergency repairs; and*
    - (i) the agreed terms in respect of*
      - (i) the date on which the tenancy starts,*
      - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis,*
      - (iii) if the tenancy is a fixed-term tenancy, the date on which the term ends,*
      - (iv) the amount of rent payable for a specified period,*
      - (v) the day on which the rent is due and the frequency of payment,**and*

(vi) the amount of any security deposit and the date the security deposit was or is required to be paid.

## CONCLUSION

[26] The Tenants' Application is allowed.

[27] I find that the Landlord must pay the Tenants double the security deposit plus interest on the original security deposit, in the total amount of \$4,266.35, by the timeline below. This amount is calculated as follows:

Item	Amount
Security Deposit	\$2,100.00
Interest (14 JUN 2023 to 16 OCT 2024)	\$66.35
Security Deposit (Double Awarded)	\$2,100.00
Total	\$4,266.35

[28] The Landlord's Application regarding damage to the Unit is denied.

## IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenants \$4,266.35 by November 5, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 16th day of October, 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.