

INTRODUCTION

- [1] The Tenants seek compensation from the Landlord for an unlawful rent increase, in the amount of \$3,312.00 and for double the security deposit plus interest, and an air conditioner, in the amount of \$264.49.

DISPOSITION

- [2] I find that the Landlord must compensate the Tenants \$3,312.00 for an unlawful rent increase.
- [3] I find that the rent for the Unit is set at \$1,854.00 per month.
- [4] I find that the Landlord must compensate the Tenants double the security deposit plus interest, in the amount of \$3,684.81.
- [5] I find that the Landlord must compensate the Tenants \$26.45 for an air conditioner.

BACKGROUND

- [6] On March 13, 2021 the parties signed a fixed-term *Form 1 Standard Form of Rental Agreement* for the period of July 1, 2021 to June 30, 2022. An \$1,800.00 security deposit was paid. Rent was \$1,800.00 due on the first day of the month.
- [7] On July 4, 2021 the parties signed an updated tenancy agreement with the same terms and conditions as the previous tenancy agreement. The only change was that rent was \$1,900.00 per month. At the end of the fixed-term, the tenancy continued on a month-to-month basis.
- [8] On July 19, 2024 the Tenants gave the Landlord one-months' notice that they were vacating the Unit on August 31, 2024.
- [9] On August 31, 2024 the Tenants vacated the Unit and the tenancy ended.
- [10] On September 23, 2024 the Tenants filed an amended *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks compensation for an unlawful rent increase, a return of double the security deposit plus interest and compensation for reimbursement of an air conditioner. The Tenants emailed the Application to the Landlord's representative as the Landlord is a corporate entity.
- [11] On September 27, 2024 the Rental Office telephoned the Landlord's representative. The Landlord's representative was provided details about the hearing and evidence process as the Landlord's representative has not had experience with the Rental Office process. The Landlord's representative confirmed the Landlord's email address on the Application was correct.
- [12] On October 3, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for October 31, 2024, along with a copy of the Application.
- [13] On October 22, 2024 the Rental Office emailed the Landlord's representative and the Tenants a 68-page evidence package.
- [14] On October 31, 2024 the Tenants joined the teleconference hearing. A representative for the Landlord did not call into the hearing at the scheduled time. I called the Landlord's representative phone number but received no answer. I left a voice message with the teleconference hearing details. After waiting ten minutes the hearing proceeded in the Landlord's absence.

ISSUES

- i. Must the Landlord compensate the Tenants for an unlawful rent increase?
- ii. Must the Landlord compensate the Tenants double the security deposit plus interest?
- iii. Must the Landlord compensate the Tenants for an air conditioner?

ANALYSIS**i. Must the Landlord compensate the Tenants for an unlawful rent increase?**

- [15] For the reasons below, I find that the Landlord must compensate the Tenants for an unlawful rent increase, in the amount of \$3,312.00. Rent for the Unit is also set at \$1,854.00.
- [16] The Tenants stated that they signed the tenancy agreement in March of 2021 where the parties agreed rent was \$1,800.00. However, when the Tenants moved into the Unit they realized the Unit's basement was not finished. The parties agreed in July of 2021 that once the basement was finished the rent would increase to \$1,900.00.
- [17] From July to November 2021 the Tenants paid \$1,800.00 each month in rent. The basement was completed in November 2021 and the rent increased to \$1,900.00.
- [18] From December 1, 2021 to April 2024 the Tenants paid \$1,900.00 each month in rent.
- [19] On May 1, 2024 the rent increased by the annual allowable guideline set for 2024 (3.0%) and the Tenants paid \$1,957.00 from May 1 to August 31, 2024.
- [20] The Tenants stated that they were not aware of the rent control rules at the time they moved into the Unit. The Tenants stated that they did not become aware of the rent control rules until September of 2024 when they contacted the Rental Office about getting their security deposit back from the Landlord.
- [21] The Tenants are seeking \$3,312.00 in returned rent for an unlawful rent increase.
- [22] I have reviewed the evidence submitted by the Tenants.
- [23] Prince Edward Island is a rent controlled jurisdiction and this has not changed since the assent of the *Rental of Residential Tenancy Act* (the "Former Act") in 1989. I note that the Island Regulatory and Appeals Commission (the "Commission") has commented extensively on the topic of rent control on Prince Edward Island. Particularly, in Order LD19-15 the Commission summarized rent control as follows:
- "In Prince Edward Island, the [Former Act] provides for a system of rent control whereby rent runs with the residential unit...**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 [Former Act]."***
- [24] The Landlord did not submit any evidence and did not have a representative present to provide any rebuttal evidence at the hearing. Nevertheless, I note that two common arguments put forward by landlords is lack of familiarity of the rules and regulations around rent control and/or the reduction of rent from an original/previous amount. The Commission has rejected these defenses in earlier decision.
- [25] In Order LR19-15 the Commission stated:

“Lack of familiarity of the Act does not in any way mitigate the requirements of the Act.”

[26] In Order LR22-18, the Commission dealt with the argument regarding rent control and landlords reducing the rent, by stating:

“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.”

[27] Subsection 47(1) of the *Residential Tenancy Act* (or the “Act”) states:

A landlord shall not increase rent except in accordance with this Part.

[28] The relevant rent control rules have not changed from the Former Act to the Residential Tenancy Act. I find that the Tenants have established their claim for a return of rent due to an unlawful rent increase. The Landlord has not complied with PART 3 of the Act (which includes clauses 47(1), (2) and 50(1)). Therefore, the Tenants are permitted to recover the unlawful rent increase that they have paid since December 1, 2021.

[29] From December 2021 to April 2024 the Tenants paid \$1,900.00 in rent and from May 2024 to August 2024 the Tenants paid \$1,957.00 in rent.

[30] The lawful rent from December 2021 to April 2024 was \$1,800.00 and from May 2024 to August 2024 the lawful rent with the annual allowable guidelines (3.0%) was \$1,854.00.

[31] Therefore, the Tenants are permitted to a return of rent for \$100.00 each month from December 2021 to April 2024 and \$103.00 from May 2024 to August 2024.

[32] The calculations are as follows:

Item	Amount
DEC 2021 – APR 2024 (29 months x \$100.00 increase)	\$2,900.00
MAY 2024 – AUG 2024 (4 months x \$103.00 increase)	\$412.00
Total	\$3,312.00

[33] Rent for the Unit is set at \$1,854.00 per month. This amount can only be increased by following the rent increase process set out in the Act

ii. Must the Landlord compensate the Tenants double the security deposit plus interest?

[34] For the reasons below, I find that the Landlord must compensate the Tenants for double the security deposit plus interest.

[35] Section 40 of 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.*

[36] The evidence establishes that on July 19, 2024 the Tenants gave the Landlord’s representative notice that they were vacating the Unit for August 31, 2024. At the time, the tenancy agreement was a month-to-month agreement. This was proper notice under subsection 55(2) of the Act.

[37] On August 31, 2024 the Tenants and the Landlord’s representative completed a move-out inspection and a *Form 5 Landlord Condition Inspection Report* was submitted into evidence.

[38] The Landlord’s representative did not return any of the \$1,800.00 security deposit to the Tenants by Monday, September 16, 2024. Further, the Landlord did not file an application with the Rental Office to retain the security deposit within the legislative fifteen days.

[39] I find that there are no earlier Rental Office decisions authoring the Landlord to retain the Tenants’ security deposit. Further, at the end of the tenancy the parties did not enter into a written agreement permitting the Landlord to retain the security deposit as provided in clause 40(3)(a).

[40] 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 compensate the Tenants double the security deposit plus interest on the original security deposit in accordance with subsection 40(4) of the Act. The total amount payable is \$3,684.48, calculated as follows:

Item	Amount
Security Deposit	\$1,800.00
Interest on \$1,800.00 (13 MAR 2021 to 22 NOV 2024)	\$84.81
Security Deposit (Double Awarded)	\$1,800.00
Total	\$3,684.81

iii. Must the Landlord compensate the Tenants for an air conditioner?

[41] For the reasons below, I find that the Landlord must compensate the Tenants \$26.45 for an air conditioner.

[42] The Tenants stated that since the Fall of 2023 the Unit’s heat pump was not working properly. The Tenants stated that from June 21, 2024 to the end of the tenancy the Unit’s heat pump did not work at all. The Tenants stated that numerous text messages were sent to the Landlord’s representative and a handyman. The Tenants stated that they would normally get no response from the Landlord’s representative.

[43] The Tenants stated that the maintenance of the heat pump is the Landlord’s responsibility. The Tenants stated that because the heat pump was not working and the Landlord did not repair the heat pump they had to purchase an air conditioner for the summer months.

[44] The Tenants submitted a receipt from Canadian Tire dated June 21, 2024. The Tenants stated that the air conditioner cost \$264.49. The Tenants stated that they took the air conditioner with them when they vacated the Unit.

[45] Section 28(1) of the Act states:

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.*

[46] I find that the Landlord failed to repair/maintain the Unit's heat pump. The evidence establishes that the Tenants tried to contact the Landlord's representative on many occasions. The Tenants at their own expense purchased an air conditioner, which otherwise would have been available if the Unit's heat pump was working properly.

[47] I find that the Landlord must compensate the Tenants for reimbursement for purchasing the air conditioner. However, as the Tenants possess the air conditioner and will continue to use it past the tenancy, I find that the Landlord is only responsible for 10% of the cost of the air conditioner for use during the Summer of 2024. Therefore, the claim is allowed in part in the amount of \$26.45.

[48] The Application is allowed in part.

[49] The Landlord must pay the Tenants \$7,023.26 by the timeline below, calculated as follows:

Item	Amount
Recovery of unlawful rent increase	\$3,312.00
Return of double the security deposit plus interest	\$3,684.81
Reimbursement for 10% of an air conditioner	\$26.45
Total	\$7,023.26

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenants \$7,023.26 by December 16, 2024.
2. Rent for the Unit is set at \$1,854.00 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 22nd day of November, 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.