

INTRODUCTION

- [1] The Tenants seek compensation from the Landlord for double the security deposit plus interest. The Landlord seeks compensation from the Tenants for cleaning, waste removal and damage.

DISPOSITION

- [2] I find that the Landlord must compensate the Tenants double the security deposit plus interest on the original security deposit, in the amount of \$4,079.89. The Tenants must compensate the Landlord for waste removal, in the amount of \$195.62. The Landlord's other claims are denied.
- [3] There is a net amount payable by the Landlord to the Tenants, in the amount of \$3,884.27.

BACKGROUND

- [4] The Unit is a two-bedroom, one-bathroom in-law suite that the Landlord has owned since October 19, 2022.
- [5] The Landlord and the Tenants entered into three fixed-term tenancy agreements from April 1, 2023 to September 30, 2024. A security deposit of \$2,000.00 was paid on March 20, 2023. Rent in the amount of \$2,000.00 was due on the first day of the month.
- [6] The tenancy agreement ended on September 30, 2024.
- [7] On October 15, 2024 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Residential Tenancy Office (the "Rental Office") seeking compensation for double the \$2,000.00 security deposit plus interest.
- [8] On October 30, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for November 21, 2024, along with a copy of the Tenant Application.
- [9] On November 19, 2024 the Rental Office emailed the parties an 86-page PDF document (the "Evidence Package" or "EP").
- [10] On November 19, 2024 the Landlord emailed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") to the Rental Office claiming compensation for cleaning, waste removal and damage.
- [11] On November 19, 2024 the Tenants emailed additional evidence to the Rental Office (the "Additional Evidence"), which the Rental Office forwarded to the Landlord on November 20, 2024.
- [12] The Tenant Application and the Landlord Application are collectively referred to as the "Applications."
- [13] On November 21, 2024 one of the Tenants, the Tenants' representative (the "Representative") and the Landlord participated in a teleconference hearing. The parties confirmed receipt of the Evidence Package, the Applications, and the Additional Evidence and the parties also confirmed that these were all of the documents submitted to the Rental Office.

PRELIMINARY MATTER

- [14] The Representative lived in the Unit from April 1, 2023 to September 30, 2024. However, the Representative was not named on any of the tenancy agreements. The Representative did not make any rent or security deposit payments directly to the Landlord. I note that a person can occupy a rental unit without being a tenant of the owner. On the evidence presented I am not satisfied that

there was a landlord-tenant relationship directly between the Landlord and the Representative (P.S.).

[15] Therefore, the Tenant Application is amended to remove the Representative as an applicant under subsection 80(3) of the *Residential Tenancy Act* (or the “Act”). In this decision only the two Tenants (J.S. and S.S.) are considered tenants of the Landlord. I note that the Landlord did not name the Representative in the Landlord Application.

[16] I also note that the distribution of the amount I have ordered below would be a matter directly between the Tenants and the Representative.

ISSUES

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

B. Must the Tenants compensate the Landlord for cleaning, waste removal and damage?

ANALYSIS

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

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

[18] 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.

[19] The tenancy agreement ended on September 30, 2024. The Landlord did not return any of the \$2,000.00 security deposit to the Tenants or file an application with the Rental Office within 15 days (by October 15, 2024).

- [20] 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.
- [21] 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 security deposit in accordance with subsection 40(4), as calculated below.

Item	Amount
Security Deposit	\$2,000.00
Interest (20 MAR 2023 to 25 NOV 2024)	\$79.89
Security Deposit (Double Awarded)	\$2,000.00
Total	\$4,079.89

B. Must the Tenants compensate the Landlord for cleaning, waste removal and damage?

Cleaning

- [22] The Landlord claims \$200.00 for cleaning expenses. The Landlord resides in Edmonton and the Landlord's family members were involved with the move-out process for the Tenants. The Landlord submitted into evidence photographs of the Unit taken near the end of the tenancy. The Landlord incurred this cost when the new tenant cleaned the Unit.
- [23] The Tenants dispute the Landlord's cleaning claim. The Tenants and the Representative spent the last day of the tenancy cleaning the Unit. The Tenants argue that the Landlord submitted into evidence photographs taken part way through the Unit's cleaning.
- [24] Clause 39(2)(a) of the *Act* provides the following rules regarding the condition of a rental unit at the end of a tenancy:

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...

- [25] I note that the *Act* did not require the Tenants to leave the Unit in move-in ready condition for the next occupant. The applicable standard was "*reasonably clean*."
- [26] The parties did not complete written move-in or move-out condition inspection reports or submit photographs showing the condition at the beginning of the tenancy. As a result, I have limited evidence regarding the baseline condition of the Unit at the beginning of the tenancy.
- [27] Further, it is unclear whether all of the Landlord's photographs show the condition of the Unit after the Tenants had finished their cleaning work. For instance, the Landlord submitted a photograph showing a dirty white cabinet (EP56) and the Tenants' Additional Evidence appears to show the same cabinet in reasonably clean condition. On the evidence presented, I am not satisfied that the Tenants failed to meet the reasonably clean standard.
- [28] For these reasons the Landlord's cleaning claim is denied.
- [29] I note that one of the benefits of completing inspection reports is that landlords and tenants put their minds to cleanliness and damage problems at the beginning and the end of the tenancy.

- [30] I also note that the *Rental of Residential Property Act* (the “*Former Act*”) was in force at the time the tenancy commenced. Although inspection reports were not mandatory under the *Former Act*, the Rental Office had a standard inspection report form available at that time to assist landlords and tenants documenting the condition of rental units.
- [31] The *Residential Tenancy Act* came into force shortly after the tenancy commenced. Inspection reports are mandatory for tenancies that started on or after April 8, 2023 (sections 18 and 38). The current standard form, a *Form 5 Landlord Condition Inspection Report (Mandatory)*, is available on the Rental Office’s website.

Waste Removal

- [32] The Landlord claims \$195.62 for removing waste left behind by the Tenants.
- [33] The Tenants dispute this claim. The Tenants stated that they tried to sell on Facebook Marketplace the items that they left behind. The Tenants stated that they moved to the side of the road the mattresses and related items that are shown in the Landlord’s photographs (EP63 and 64). However, the Tenants deny moving the table to the side of the road.
- [34] Subsection 43(1) of the *Act* states:
- A tenant is not entitled to leave the tenant’s personal property in the rental unit after the tenancy agreement is terminated.*
- [35] Clause 28(3)(b) states:
- A tenant is responsible for*
(b) proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.
- [36] The Tenants were required to remove all of their personal property at the end of the tenancy. Instead, the Tenants left behind personal property that caused the Landlord to incur waste removal charges.
- [37] Upon review of the invoice submitted by the Landlord, I am not satisfied that the Landlord incurred an additional cost regarding the table that was also removed from the Unit. As a result, the Landlord’s \$195.62 waste removal claim is allowed.

Damage – Walls and Appliances

- [38] The Landlord claims that the Tenants and their guests damaged the Unit’s walls and appliances.
- [39] The Landlord submitted into evidence a \$570.48 invoice for painting work and photographs of the Unit taken near the end of the tenancy. The Landlord stated that the Unit was new when it was purchased and it was only occupied by another person for about three months before the Tenants moved in.
- [40] The Landlord also submitted into evidence photographs of a stove, dishwasher and refrigerator. The Landlord stated that the Tenants and their guests dented and scratched these appliances. The Landlord argues that he would have attempted to replace these items through warranties if the Tenants had told him that they were damaged at the beginning of the tenancy.
- [41] The Landlord is not aware of any issues with the current operation of the appliances. The Landlord has not received complaints from the Unit’s new tenant regarding the functioning of these

appliances. The Landlord submitted into evidence advertisements for a dishwasher and refrigerator. The Landlord has not replaced these appliances yet because he is first waiting upon the results of this decision.

- [42] The Tenants' evidence is that there was already some damage to the walls and appliances at the beginning of the tenancy. The Tenants deny responsibility for damaging the walls and appliances beyond reasonable wear and tear.
- [43] The parties provided conflicting evidence regarding the initial condition of the Unit. As noted above, the parties did not complete written move-in or move-out condition inspection reports or submit photographs showing the initial condition of the Unit. As a result, I do not have adequate evidence regarding the Unit's baseline condition at the beginning of the tenancy.
- [44] Nevertheless, in the context of a tenancy agreement that lasted one-and-a-half years, the damage shown in the parties' photographs appears to be reasonable wear and tear which is not the Tenants' responsibility (clause 39(2)(a)).
- [45] For these reasons the Landlord's damage claims are denied.

Tenancy Agreement Form

- [46] The *Residential Tenancy Act* has been in force since April 8, 2023. The parties entered into two fixed-term agreements after this date. The Landlord must use tenancy agreement forms that comply with the current legislation.
- [47] 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.

[48] The *Form 1 Standard Form of Tenancy Agreement* is available on the Rental Office's website.

CONCLUSION

[49] I have offset the Tenants' and the Landlord's established claims that are determined above. The Landlord must pay the Tenants the net amount of \$3,884.27 by the timeline below, calculated as follows:

Item	Amount
Double security deposit plus interest	\$4,079.89
Waste removal claim	-\$195.62
Net amount	\$3,884.27

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenants \$3,884.27 by December 16, 2024.

DATED at Charlottetown, Prince Edward Island, this 25th day of November, 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.