

INTRODUCTION

- [1] The Tenant applied for compensation from the Landlord for double the security deposit plus interest and for personal property disposed of by the Landlord.
- [2] The Landlord applied for compensation from the Tenant for damage and cleaning.

DISPOSITION

- [3] I find that the Landlord must compensate the Tenant double the security deposit plus interest on the original security deposit, in the amount of \$2,763.46. The Landlord must also compensate the Tenant \$100.00 for disposing of the Tenant's personal property contrary to Section 43 of the *Residential Tenancy Act*. The Tenant must compensate the Landlord for damage in the amount of \$2,837.25.
- [4] There is a net amount payable by the Landlord to the Tenant, in the amount of \$26.21.

BACKGROUND

- [5] On August 29, 2022 the parties entered into a written, fixed-term tenancy agreement for the period of September 15, 2022 to September 30, 2023. Upon expiry of the fixed-term, the tenancy continued on a month-to-month basis. On September 15, 2022 the Tenant paid a \$1,350.00 security deposit. Rent was \$1,350.00 due on the first day of the month.
- [6] On May 10, 2024 the Landlord's representatives (the "Representatives") served the Tenant a *Form 4 (A) Eviction Notice* (the "First Notice") effective June 10, 2024 for non-payment of rent, repeatedly late payment of rent and damage.
- [7] On June 2, 2024 the Representatives served the Tenant another *Form 4 (A) Eviction Notice* (the "Second Notice") effective June 21, 2024 for non-payment of rent. The Tenant paid 14-days' of rent for June of 2024.
- [8] On June 14, 2024 the Tenant vacated the Unit and the tenancy agreement ended by mutual agreement.
- [9] On July 17, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Tenant's Application") with the Residential Tenancy Office (the "Rental Office") seeking compensation for double the \$1,350.00 security deposit, plus interest and compensation for personal property disposed of by the Landlord in the amount of \$200.00.
- [10] On October 29, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for November 26, 2024, along with a copy of the Tenant's Application.
- [11] On November 13, 2024 the Representatives filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Landlord's Application") with the Rental Office claiming compensation for damage and cleaning in the amount of \$5,462.50.
- [12] On November 14, 2024 the Rental Office emailed the parties an updated notice of a teleconference hearing, scheduled for November 26, 2024, along with a copy of the Tenant's Application and the Landlord's Application.
- [13] On November 22, 2024 the Rental Office emailed the parties a 91-page PDF document (the "Evidence Package" or "EP"). The Representatives submitted 2-pages of additional evidence, which was forwarded to the Tenant.

- [14] On November 26, 2024 the Tenant, a representative for the Tenant, a witness for the Tenant and the Representatives participated in a teleconference hearing. The parties confirmed receipt of the Evidence Package and the Landlord's additional evidence. The parties also confirmed that all documents submitted to the Rental Office were included in the Evidence Package.
- [15] On November 27, 2024 the Tenant submitted 35-pages of additional evidence. The Representatives provided a response to the Tenant's additional evidence. Both the additional evidence and the response were included as evidence.

ISSUES

- i. Must the Landlord compensate the Tenant double the security deposit plus interest?
- ii. Must the Landlord compensate the Tenant for disposing of the Tenant's personal property?
- iii. Must the Tenant compensate the Landlord for damage and cleaning?

ANALYSIS

i. **Must the Landlord compensate the Tenant double the security deposit plus interest?**

- [16] For the reasons below, I find that the Landlord must compensate the Tenant double the security deposit plus interest on the principal security deposit amount.
- [17] 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.*
- [18] The tenancy agreement ended on June 14, 2024. The Landlord did not return any of the \$1,350.00 security deposit to the Tenant or file an application with the Rental Office within 15 days (June 29, 2024).

- [19] There are no earlier Rental Office decisions authorizing the Landlord to retain the Tenant's security deposit. At the end of the tenancy the parties did not enter into a written agreement permitting the Landlord to retain the security deposit.
- [20] 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 Tenant double the security deposit plus interest on the principal security deposit amount, in accordance with subsection 40(4) of the Act, as calculated below.

Item	Amount
Security Deposit	\$1,350.00
Interest (15 SEP 2022 to 23 DEC 2024)	\$63.46
Security Deposit (Double Awarded)	\$1,350.00
Total	\$2,763.46

ii. **Must the Landlord compensate the Tenant for disposing of the Tenant's personal property?**

- [21] For the reasons below, I find that the Landlord must compensate the Tenant \$100.00 for disposing of the Tenant's personal property.
- [22] The Tenant stated that the Representatives disposed of her personal property left behind in the Unit. The personal property included nine kitchen items and utensils (EP49), which the Tenant valued at approximately \$200.00. The Tenant did not have receipts or documentary evidence to support the \$200.00 valuation for the personal property.
- [23] The Representatives stated that the cleaners threw out the personal property while cleaning the Unit. The Representatives stated that they received a text message from the Tenant about the personal property, but it was too late, the property was already disposed by the cleaners. The Representatives stated that the personal property was not \$200.00 and could be replaced for cheaper.
- [24] Subsection 43(1) of the Act states that a tenant is not entitled to leave personal property in the Unit after the tenancy agreement is terminated. However, subsection 43(2) of the Act also states:
- (2) *Where a tenant abandons or vacates a rental unit and leaves personal property on the residential property, the landlord shall either*
- (a) *remove the personal property and immediately place it in safe storage; or*
- (b) *store the personal property on the residential property in a safe manner.*
- [25] Section 43 requires that where a tenant leaves behind personal property, a landlord must follow specific steps, such as safely storing the personal property, taking inventory of the personal property and, if required, file an application with the Rental Office for permission to dispose of the personal property.
- [26] I find that the Landlord has not complied with section 43 of the Act.
- [27] The Tenant seeks compensation for the disposed items, in the amount of \$200.00. However, the Tenant has not submitted evidence to establish the value of the disposed items. After reviewing the documentary evidence and considering the testimony of the parties, I find that the Tenant is entitled to compensation in the amount of \$100.00 for the disposed personal property.
- [28] The Tenant's Application is allowed in part. The Landlord must compensate the Tenant \$100.00 for the disposed personal property. The Tenant is entitled to compensation in the total amount of \$2,863.46.

iii. Must the Tenant compensate the Landlord for damage and cleaning?

- [29] The Landlord claims \$5,462.50 for damage and cleaning.
- [30] The Representatives stated that the Unit is a new build and that the Tenant was the first to occupy the Unit. The Representatives stated that on June 14, 2024 an inspection of the Unit was completed without the Tenant present and a *Form 5 Landlord Condition Inspection Report* (the "Report") was completed (EP47). The Representatives stated that the Tenant was invited but did not show up for the move-out inspection. The Representatives stated that the issues found were as follows:
1. Bathroom heater damaged;
 2. Bathroom vanity damaged;
 3. Sink and bathtub drain damaged;
 4. Wall damage and painting;
 5. Garbage removal and cleaning;
 6. Countertop damaged; and
 7. Water heater damage.
- [31] The Representatives submitted photographs of the Unit after the tenancy had ended.
- [32] The Tenant disputed causing the damage listed on the Report. The Tenant also disputed the cleaning fee because the Unit was not finished when she moved in and when she vacated the Unit, it was reasonably clean. The Tenant submitted photographs of the Unit taken on June 14, 2024.
- [33] 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...*
- [34] I note that the Act does not require the Tenant to leave the Unit in move-in ready condition for the next occupant. The applicable standard is "reasonably clean."

Bathroom heater - \$300.00

- [35] The Representatives stated that the bathroom heater was not functioning properly and will cost \$300.00 to be replaced and installed. The Representatives stated that the heater has not been fixed yet.
- [36] The Tenant denied damaging the bathroom heater. The Tenant stated that she never used the bathroom heater during the tenancy.
- [37] I note that the parties did not complete a written move-in condition report together or submit photographs showing the condition at the beginning of the tenancy. However, the Representatives stated that the Unit was a new build and that the Tenant was the first occupant of the Unit. The Tenant did not dispute the Unit being newly built but stated that the Unit was not finished upon moving into the Unit.
- [38] I find that the Landlord has not established, on a balance of probabilities, that the Tenant caused undue damage to the bathroom heater. The sole photograph submitted (EP48) does not assist in determining the issue with the heater and does not assist in establishing that the Tenant caused the issue. Further, I note that the Landlord did not submit an invoice, quote or receipt into evidence to assist in supporting the \$300.00 expense. This claim is denied.

Bathroom vanity - \$450.00

- [39] The Representatives stated that the Tenant improperly used the bathroom sink which caused excessive water to run down the vanity and caused water damage (EP52 and 78). The Representatives stated that a plumber was called to the Unit, checked the pipes but could not find a leak. The Representatives stated that the plumber installed some caulking.
- [40] The Tenant stated that she called the Representatives three times regarding a leaking pipe. The Tenant denied causing water damage to the vanity. The Tenant stated that some water may have been left on the vanity but not enough to cause water damage.
- [41] I find that the Landlord has not established that the Tenant caused undue damage to the bathroom vanity. The photographs submitted into evidence demonstrate some discolouration of the vanity. The evidence submitted by the Landlord does not sufficiently establish the cause of the water damage on the vanity. This claim is denied.

Sink & bathtub drain - \$120.00

- [42] The Representatives stated that the drains for the bathtub and sink were broken (EP69 and 84). The Representatives stated that the plumber needed to replace the drains. The Representatives stated that the bathtub drain needed to be fully replaced because of the steel pieces were fully broken off.
- [43] The Tenant stated that she never used the drain and that it was not working properly since she first moved into the Unit.
- [44] I find that the evidence submitted does not establish undue damage to the sink drain. The damage to the sink's drain plug is not established to be beyond normal wear and year. However, I find that the evidence submitted does establish that the damage to the bathtub drain is beyond normal wear and tear.
- [45] The Landlord did not submit photographs from the beginning of the tenancy. I find that the Landlord is entitled to \$60.00 for the damage to the bathtub drain. This represents half of the requested expense. This claim is allowed in part.

Wall damage and painting - \$200.00

- [46] The Representatives stated that there was some damage to the Unit's walls (EP65). The Representatives stated that it will cost \$200.00 to repair the damage and repaint the wall. The repairs and the painting have not been completed.
- [47] The Tenant stated that the damage to the walls is normal wear and tear.
- [48] I find that the Landlord has not established its claim. The photographs submitted into evidence do not show undue damage. Further, I find that the repairs and the painting have not been completed. No invoice, quote or receipt has been submitted into evidence to establish the \$200.00 claim. The claim is denied.

Garbage removal and cleaning - \$230.00

- [49] The Representatives stated that the Unit was not clean and had a lot of garbage. The Representative stated that it cost \$150.00 to remove the garbage from the Unit and \$80.00 to clean the Unit.
- [50] The Tenant stated that she cleaned the Unit and submitted photographs of the Unit before she vacated. The Tenant stated that she did not have an opportunity to return to the Unit to remove any remaining belongings from the Unit.

- [51] The Tenant's witness stated on June 15, 2024 he helped the Tenant move some personal items from the Unit.
- [52] I find that the Landlord has not established that the Unit was below the standard of "reasonably clean." Therefore, the claim for cleaning is denied.
- [53] I find that the Landlord did not submit an invoice or receipt for the cost to remove the garbage. The photographs submitted into evidence show garbage which is outside of the Unit. I find that the Landlord has not established a valid claim. The claim for garbage removal is denied.

Countertop - \$3,967.50

- [54] The Representatives stated that the Tenant damaged the countertop and it needs to be replaced. The Representatives stated that the Tenant agreed that they could keep the security deposit. The Representatives stated that the cost to replace the countertop totals \$3,967.50. However, they agreed to only charge the Tenant \$500.00 before the Tenant filed the Tenant's Application. The Representatives are now seeking the full amount to replace the countertop.
- [55] The Representatives submitted photographs and a quote into evidence (EP58, 70, 80 and 91). The Representatives also provided a response to the Tenant's additional evidence which disputes the Tenant's additional evidence.
- [56] The Tenant stated that she did not cause the damage to the countertop and was unaware of the damage. The Tenant denied that she agreed for the Representatives to retain the security deposit.
- [57] I find that the Landlord's evidence establishes that the damage to the countertop is beyond normal wear and tear. Further, the countertops would have been installed in 2022, making the countertops approximately two-and-a-half years old. The Landlord is seeking \$3,967.50 to replace the damaged countertops.
- [58] The Island Regulatory and Appeals Commission (the "Commission") in Order LR24-06 commented on the principle of betterment. The basic principle at common law is that a party should not be put in a better position than they would have been had the wrongdoing not occurred.
- [59] Based on the evidence submitted, I find that the Landlord is entitled to 70% of this claim, totaling \$2,777.25.

Water heater - \$350.00

- [60] The Representatives stated that the pipe for the water heater was burned (EP88). The Representatives stated that the Tenant intentionally damaged the water heater. The Representatives stated that the plumber looked at the water heater and informed the Representatives that it was not caused by a malfunction.
- [61] The Tenant denied the Representatives' accusation and stated that she never saw the damage to the water heater.
- [62] I find that the Landlord has not established that the Tenant caused undue damage to the water heater. This claim is denied.
- [63] The Landlord's Application is allowed in part. The Landlord is entitled to compensation in the total amount of \$2,837.25.

CONCLUSION

[64] I have offset the Tenant's and the Landlord's established claims that are determined above. The Landlord must pay the Tenant the net amount of \$26.21 by the timeline below, calculated as follows:

Item	Amount
Double security deposit plus interest	\$2,763.46
Compensation for disposal of items	\$100.00
Total compensation awarded to Tenant	\$2,863.46
Less total compensation awarded to Landlord	(\$2,837.25)
Net amount	\$26.21

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$26.21 by January 14, 2025.

DATED at Charlottetown, Prince Edward Island, this 23rd day of December, 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 (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.