

INTRODUCTION

- [1] The Landlord claims against the Tenants for a total amount of \$5,850.00 for cleaning, damage and economic loss. The Landlord seeks to retain the Tenants' security deposit plus interest in the amount of \$1,995.49 and additional compensation in the amount of \$3,855.81.
- [2] The Tenants claim against the Landlord for a total amount of \$5,757.00 for return of rent for an unlawful rent increase and moving expenses.

DISPOSITION

- [3] The Landlord established a total claim of \$476.00. The Tenants established a total claim of \$450.00. The net amount owed to the Landlord is \$26.00. The Landlord may retain \$26.00 from the security deposit.
- [4] The Tenants receive \$1,969.49 of the security deposit funds.

BACKGROUND

- [5] On August 20, 2021 the parties entered into a written, fixed-term tenancy agreement for the period of September 1, 2021 to August 31, 2022. Upon the expiry of the fixed-term, the tenancy continued on a month-to-month basis. Rent was \$1,957.00 due on the first day of the month.
- [6] On August 21, 2021 the Tenants paid the Landlord a \$1,900.00 security deposit. The Tenants also paid a \$400.00 oil deposit, which was returned to the Tenants at the end of the tenancy.
- [7] On August 26, 2024 the Landlord served the Tenants with a *Form 4 (B) Eviction Notice* (the "Notice") effective October 31, 2024 for purchaser's own use.
- [8] On October 31, 2024 the Tenants vacated the Unit and the tenancy ended pursuant to the Notice.
- [9] On November 12, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord Application sought to retain the security deposit plus interest and sought compensation exceeding the security deposit.
- [10] On November 14, 2024 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office. On November 25, 2024 the Tenant Application was amended. The Tenant Application sought compensation for an unlawful rent increase and moving expenses.
- [11] On November 25, 2024 the Rental Office emailed the parties notice of a teleconference hearing, scheduled for December 19, 2024.
- [12] On December 12, 2024 the Rental Office emailed the parties a 171-page PDF document (the "Evidence Package" or "EP").
- [13] On December 19, 2024 the Landlord, the Landlord's translator, the Landlord's witness ("JG") and the Tenants participated in the hearing. The parties acknowledged receipt of the Evidence Package and that all documents sent to the Rental Office were included in the Evidence Package.

ISSUES

- i. Has the Landlord established valid claims to retain the Tenants' security deposit, interest and additional compensation?
- ii. Have the Tenants established claims for a return of rent and compensation for moving expenses?

ANALYSIS**i. Has the Landlord established valid claims to retain the Tenants' security deposit, interest and additional compensation?**

[14] The Landlord is seeking compensation for cleaning, undue damage and economic loss in the amount of \$5,850.00, calculated as follows:

1. Cleaning	\$650.00
2. Damage	\$200.00
3. <u>Economic loss</u>	<u>\$5,000.00</u>
	\$5,850.00

[15] Clause 39(2)(a) of the *Residential Tenancy Act* (or 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] 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 is "reasonably clean."

[17] Recently, the Island Regulatory and Appeals Commission (the "Commission") in Order LR25-02 commented on the importance of photographs at the beginning of the tenancy to establish a baseline condition of the rental unit. The Commission stated:

"The Commission wishes to remind landlords that in order to fully support claims for damage and or necessary cleaning it is essential to have pictures for both the beginning and the end of the tenancy. Pictures at the beginning of the tenancy are necessary to establish a reference point with respect to condition and cleanliness."

[18] Included in the Landlord's evidence were photographs of the Unit prior to the tenancy and after the tenancy.

The Inspection Reports

[19] The Landlord submitted two *Form 5 Landlord Condition Inspection Reports* into evidence. The first *Form 5 Landlord Condition Inspection Report* (the "First Report") dated October 29, 2024 was completed by the Tenants and the Landlord's witness's partner (who was an authorized agent of the Landlord). The First Report summarized each room in the Unit as "ok" and that the oil tank and propane tank were full (EP40-41).

[20] JG stated that her partner completed the inspection while it was dark and that he was inexperienced with such move-out inspections. JG stated that the First Report was not reliable and did not provide an accurate description of the Unit.

- [21] The Landlord submitted a second *Form 5 Landlord Condition Inspection Report* (the "Second Report") dated October 30, 2024 (EP42). The Landlord stated that the Second Report was completed without the Tenant's attendance. The Landlord stated that the Second Report was completed by the Landlord's representative after reviewing the photographs and comments from the cleaners and JG.
- [22] I note that in this case the Landlord was not obligated to complete a move-out inspection report (section 38) because the tenancy started before the Act came into force (section 109).

Claims

Cleaning - \$650.00

- [23] The Landlord stated that at the beginning of the tenancy she hired a professional cleaning company to clean the Unit and provided the invoice and text messages for the cleaning services (EP21-25). The Landlord stated that after the Tenants vacated, the Unit was unclean. The Landlord stated she knows the Tenants are not responsible for professional cleaning, however, the cost to professionally clean the Unit was \$1,300.00. This included three cleaners over nine hours. The Landlord submitted the invoice into evidence (EP26 and 104).
- [24] The Landlord stated that she is only charging the Tenants 50% of the invoice or \$650.00 for cleaning the Unit.
- [25] The Landlord denied that there was an agreement that the Tenants did not have to clean the Unit.
- [26] The Landlord submitted photographs of the Unit before the tenancy (EP43-51) and photographs after the tenancy ended (EP29-39; 52-62). The Landlord stated that the photographs show the condition of the Unit prior to and after the tenancy. Duplicated photographs and documents submitted by the Landlord were included in the Evidence Package.
- [27] JG stated that the Unit was unclean when she arrived with the cleaners on October 30, 2024. JG stated that the appliances and windowsills required cleaning.
- [28] The Tenants stated that they were not happy about the Unit's condition when they moved into the Unit. The Landlord needed to hire professional cleaners, however, the Tenants stated that they were disappointed with the condition of the Unit, despite the cleaner's work.
- [29] The Tenants stated that the Unit was cleaned and that it is not their responsibility to leave the Unit professionally cleaned. The Tenants stated that the photograph of the stove (EP95) is the side facing the cupboard. The Tenants stated that the stove has not been moved and the dirt was never noticed.
- [30] I have reviewed the evidence regarding the condition of the Unit after the tenancy ended. The applicable standard is "reasonably clean" and not "professionally clean." I find that the photographs demonstrate that the Unit was below the standard of "reasonably clean." Particularly, I find that the condition of the appliances was below this standard.
- [31] The Landlord is seeking \$650.00 for cleaning, which is 50% of the total cost to clean the Unit professionally. After taking into consideration the condition of the Unit shown by the photographs, the number of cleaners and the invoice submitted into evidence (EP104), I find that the claim is allowed in part, for a total amount of \$276.00 (\$30/hr. x 8 hours + 15% HST).

Damage - \$200.00

- [32] The Landlord stated that there was undue damage to the Unit. Particularly, the Landlord is claiming \$200.00 for damage to the basement bedroom walls. The Landlord stated that the Tenants used an adhesive material which caused the paint to peel and left behind an adhesive residue (EP66).
- [33] The Tenants stated that their son installed LED lights, which caused some paint removal on the walls. The Tenants stated that there was no adhesive residue because the walls were wiped down after the LED lights were removed. The Tenants stated that one of the painters hired by the Landlord did patch the spot and was going to paint it. The Tenants stated that they would have repaired the walls if given the opportunity.
- [34] The evidence establishes that the damage to the walls is beyond normal wear and tear. I find that the Landlord is entitled to their \$200.00 claim.

Economic Loss / Floor Damage - \$5,000.00

- [35] The Landlord stated that at the beginning of the tenancy the hardwood floors were in excellent condition with only minor dents in the living room (EP43-51). The floors were installed in 2006. However, after the Tenants moved out of the Unit, the floors were severely damaged (EP57-62). The Landlord stated that the floors were scratched and had lost their finish and colour. The Landlord stated that the floor damage financially impacted the sale of the Unit.
- [36] JG stated that the price of the Unit was reduced because of the condition of the floor.
- [37] The Landlord stated that the Unit was sold for less because of the damage to the floor. The Landlord stated that the estimated cost to repair the floors was \$6,842.50 (EP63). The Landlord stated that the Tenants should be responsible for at least \$5,000.00.
- [38] The Tenants stated that the floors were not in excellent condition at the beginning of the tenancy. The Tenants stated that the floors were seventeen years old and that the condition of the floors at the end of the tenancy was consistent with normal wear and tear.
- [39] The Tenants stated that the Landlord did not suffer economic loss. The Tenants stated that the Landlord sold the Unit for 97% of the asking price after three weeks on the market (EP154-155).
- [40] The Landlord specifically claimed for economic loss in the Landlord Application, a remedy under tort law. I do not have the jurisdiction to award an applicant a remedy for economic loss. However, clause 85(1)(d) of the Act states:

After hearing an application, the Director may make an order

requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.

- [41] Based on the Landlord's submissions, I find that effectively the Landlord is seeking \$5,000.00 for compensation for undue damage to the Unit's floors. The Act provides authority for the determination of this type of claim.
- [42] I have reviewed the evidence, particularly the photographs from the beginning and the end of the tenancy and I find that there is insufficient evidence to establish the Landlord's claim. Tenants are responsible to repair or to pay for undue damage which is beyond normal wear and tear.

- [43] In this case, the Unit's hardwood floors were installed in 2006. The Landlord submitted into evidence the "before" photographs from the Summer of 2021. These photographs were not as detailed as the "after" photographs. Many of the "before" photographs were taken from a distance and none of the "before" photographs show a close-up of the hardwood floors.
- [44] Further context in this case is that the Tenants were permitted to have a dog in the Unit. It is possible that the Tenants' dog worsened the condition of the hardwood floors. However, the evidence does not assist me in distinguishing normal wear and tear and any undue damage.
- [45] The evidence establishes that the Landlord sold the Unit quickly and received 97% of the asking price. I find that there is insufficient objective evidence to find that the Tenants have caused undue damage which resulted in the Landlord suffering a loss, as a result of a contravention of the Act. The claim is denied.
- [46] In summary, the Landlord Application is allowed in part.
- [47] The Landlord's established claim against the Tenants is \$476.00.

ii. **Have the Tenants established claims for a return of rent and compensation for moving expenses?**

- [48] The Tenants are seeking compensation for a return of rent due to an unlawful rent increase and moving expenses in the amount of \$5,757.00, calculated as follows:
- | | |
|---------------------------|-------------------|
| 1. Unlawful rent increase | \$3,800.00 |
| 2. <u>Moving expenses</u> | <u>\$1,957.00</u> |
| | \$5,757.00 |

Unlawful rent increase - \$3,800.00

- [49] The Tenants stated that they are seeking a \$3,800.00 (\$100.00 x 38 months) return of rent due to the unlawful increase, which is authorized under subsection 50(8) of the Act.
- [50] The Tenants stated that the Unit was advertised for \$1,800.00 a month. The Tenants stated that JG informed them that there was a lot of interest in the Unit and to secure the Unit they would have to pay \$1,900.00 a month and move into the Unit for September 1, 2021. The Tenants stated that they originally wanted to move into the Unit on October 1, 2021. However, the Tenants accepted JG's offer and moved into the Unit early at the monthly rent of \$1,900.00.
- [51] The Landlord stated that the Tenants were the first tenants to occupy the Unit. The Landlord stated that previously the Landlord lived in the Unit and a mutual friend also occupied the Unit with the Landlord for seven or eight months.
- [52] JG stated that the Unit was first advertised for rent in 2021 for \$1,800.00 a month. JG stated that the Landlord has the right to set the rent for the first time. JG stated that the Landlord received an offer of \$2,200.00 a month from an unknown party to rent the Unit. JG stated that the Landlord preferred to rent to the Tenants. JG stated that she asked if the Tenants could rent the Unit for \$1,900.00 a month, which the parties agreed.
- [53] I have reviewed the evidence and I find that the Tenants have not established their claim for a return of rent due to an unlawful rent increase.

- [54] The Tenants did not provide any objective evidence, such as a former tenancy agreement to establish a previous rent for the Unit. The Landlord stated that the Unit was never rented and no previous "rent" was charged. When a rental unit is first placed into the rental market a landlord has the opportunity and freedom to set the rent. Once that rent is set and charged to a tenant, the rental unit falls under clauses 47(1) and (2) of the Act.
- [55] Further, there is no evidence to conclude that the Landlord and their mutual friend who occupied the Unit for a period of time was a "landlord-tenant relationship."
- [56] In this case, I find that despite the Unit being advertised for \$1,800.00, there is no evidence to establish that a tenancy agreement was created with a monthly rent of \$1,800.00. Once the parties entered into a tenancy agreement and the Tenants paid the first \$1,900.00 rent payment, the rent was set and any further increases needed to be in compliance with the Act.
- [57] Therefore, I find that the return of rent claim is denied.

Moving Expenses - \$1,957.00

- [58] The Tenants stated that they are entitled to compensation for moving expenses under clause 72 of the Act, which states:

A landlord shall compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to one month's rent plus reasonable moving expenses in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant.

- [59] The Tenants stated that they received their 1-months' rent compensation in lieu of paying October 2024 rent. The Tenants stated that they did not receive compensation for moving expenses.
- [60] The Tenants stated that they did not have exact costs associated with moving because they moved their personal belongings themselves and did not hire a professional moving company. The Tenants stated that the moving expenses cost approximately \$800.00 to \$1,000.00, which included fuel, dumping fees and lost income. The Tenants stated that on the Tenant Application they requested the maximum amount for moving expenses, which is one-months' rent, because they were unsure of the exact amount.
- [61] The Landlord did not dispute owing moving expenses. The Landlord stated that the Tenants were not compensated because the Tenants would not provide receipts or invoices for the total amount. The Landlord stated that the Tenants have not provided sufficient evidence to establish their \$800.00 to \$1,000.00 claim. The Landlord stated that \$300.00 is more reasonable for moving expenses, which include, dumping fees and fuel costs.
- [62] I have reviewed the evidence and I find that the Landlord must compensate the Tenants \$450.00 for moving expenses. I accept the Tenants' oral evidence that it cost approximately \$300.00 for fuel and dumping fees and I substitute the Tenants' income loss with labour and time to move their personal belongings from the Unit. I calculate this amount to \$150.00 (\$30/hr. by 2 people multiply by 2.5 hours).
- [63] In summary, the Tenants Application is allowed in part.

CONCLUSION

[64] The Landlord Application is allowed in part. The Landlord established a total claim of \$476.00.

[65] The Tenant Application is allowed in part. The Tenants established a total claim of \$450.00.

[66] The net amount owed to the Landlord is \$26.00. The Landlord may retain \$26.00 from the security deposit. The Tenants receive \$1,969.49 of the security deposit funds.

IT IS THEREFORE ORDERED THAT

1. The Landlord may retain \$26.00 from the security deposit.
2. The Landlord must return the remaining balance of the security deposit and interest to the Tenants, in the amount of \$1,969.49 by February 27, 2025.

DATED at Charlottetown, Prince Edward Island, this 27th day of January, 2025.

(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.