INTRODUCTION

[1] The Landlords claim against the Tenants for a total amount of $1,987.07 for damage. The Landlords seek to retain the Tenants' security deposit plus interest in the amount of $1,575.07 and additional compensation in the amount of $412.00.

[2] The Tenants filed for the return of their security deposit, double the security deposit and applicable interest.

DISPOSITION

[3] The Landlords must compensate the Tenants double the security deposit plus interest, in the amount of $3,075.15. The Tenants must compensate the Landlords for cleaning in the amount of $240.00

[4] There is a net amount payable by the Landlords to the Tenants, in the amount of $2,835.15

BACKGROUND

[5] On December 1, 2022 the parties entered into a written, one-year fixed-term tenancy agreement. The parties renewed the fixed-term December 1, 2023 for another one-year. A security deposit of $1,500.00 was paid at the beginning of the tenancy. Rent was $1,500.00 due on the first day of the month.

[6] On September 1, 2024 the Tenants vacated the Unit and the tenancy ended by mutual agreement.

[7] On September 17, 2024 the Landlords 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.

[8] On October 22, 2024 the Rental Office emailed the parties notice of a teleconference hearing (the "Notice of Hearing") scheduled for November 14, 2024.

[9] On November 8 and 13, 2024 the Rental Office emailed the parties a 66-page PDF document (the "Evidence Package" or "EP").

[10] On November 14, 2024, the parties did not call into the scheduled hearing. The hearing was adjourned.

[11] On December 16, 2024 the Rental Office emailed the parties a new Notice of Hearing, scheduled for January 9, 2025.

[12] On January 2, 2025 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office. The Tenant Application sought the return of the security deposit, double the security deposit and applicable interest.

[13] An updated Notice of Hearing, including the Tenant Application was emailed to the parties, scheduled for January 9, 2025. Collectively, the Landlord Application and the Tenant Application are referred to as the "Applications."

[14] On January 9, 2025 the Tenants and one of the Landlords (the "Landlord") called into the hearing for determination of the Applications. The Landlord was representing the Landlords. The parties acknowledged receipt of the Evidence Package and that all the documents sent to the Rental Office were included in the Evidence Package.

[15] At the beginning of the hearing, I permitted the Landlord Application to be amended to include a request for compensation in the amount of $1,987.07. The amendment was permitted under clause 80(3)(f) of the *Residential Tenancy Act* (or the "Act").

ISSUES

i. Must the Landlords compensate the Tenants double the security deposit and applicable interest?

ii. Must the Tenants compensate the Landlords for damage?

ANALYSIS

i. Must the Landlords compensate the Tenants double the security deposit and applicable interest?

[16] For the reasons below, I find that the Landlords must compensate the Tenants double the security deposit, plus interest on the principal security deposit amount.

[17] 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.*

[18] The Tenants stated that they gave notice to the Landlords in July 2024 that they were vacating the Unit on September 1, 2024. The Landlord did not oppose the September 1, 2024 vacate date. The Landlord stated that the Tenants only contacted him whenever a deadline was upcoming or that they wanted their security deposit back. The Landlord stated that because he was late filing the Landlord Application, the Tenants are expecting the return of double the security deposit.

[19] The Landlords did not return the security deposit funds to the Tenants or file the Landlord Application with the Rental Office within 15 days (September 16, 2024).

[20] There are no earlier Rental Office decisions authorizing the Landlords to retain the Tenants' security deposit. At the end of the tenancy the parties did not enter into a written agreement permitting the Landlords to retain the security deposit.

[21] As a result, I find that the Landlords did not comply with the section 40 requirements for retaining a security deposit. Therefore, by operation of law, the Landlords must compensate the Tenants double the security deposit, plus interest on the principal amount in accordance with subsection 40(4) of the Act, calculated as follows:

1.	Security Deposit	$1,500.00
2.	Interest (1 DEC 22 – 7 FEB 24)	$75.15
3.	Security Deposit (Double awarded)	$1,500.00
	Total	$3,075.15

ii. Must the Tenants compensate the Landlords for damage?

[22] For the reasons below, I find that the Landlords have established a claim in the amount of $240.00.

[23] Clause 39(2)(a) of the Act provides the following rules regarding the condition of a rental unit at the end of the 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…*

[24] The Landlord stated that after the Tenants vacated he inspected the Unit and found significant damage to the walls and floors, particularly in the Unit's porch. The Landlord stated that the Unit was newly renovated in 2022. The Landlord submitted photographs of the damage from the September 1, 2024 inspection (EP26-29).

[25] The Landlord stated that there was a strong smell of cat urine in the Unit. The Landlord stated that the Tenant's cats' litterboxes were in the porch and that water damage was present in the porch. The Landlord stated that he removed four bags of garbage and cat litter from the Unit.

[26] The Landlord stated that the Tenants acknowledged the floor damage through text messages (EP30 and 45). The Landlord provided an invoice from D & P Holdings Ltd. for $1,987.07 (EP19). The Landlord stated that this was the cost to repair the porch floor, including labour and materials.

[27] The Tenants stated that they were not offered or informed about a move-out inspection. The Tenants stated that they cleaned the whole Unit prior to moving out. The Tenants stated that the cat's litterbox was in the porch, however, they cleaned and looked after the litterbox. The Tenants stated that they were unaware of any water damage. The Tenants stated that such water damage in the porch may have been caused by leaking pipes.

[28] I have reviewed the evidence and my findings are as follows.

[29] 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 a 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.*"

[30] In this case, the Landlords did not submit any photographs of the Unit prior to the start of the tenancy. Further, a move-in and move-out inspection, accompanied by a *Form 5 Landlord Condition Inspection Report* would have also been helpful in assisting in establishing a baseline condition of the Unit. I note that inspection reports were not obligatory under section 109 of the Act.

[31] The evidence submitted by the Landlords demonstrates damage to the walls and floors. However, the evidence does not establish that the Tenants caused the damage or establishes the extent of the damage from the beginning of the tenancy. The text messages do not establish that the Tenants admitted to causing the damage. The Tenants only admit and apologize for the smell of cat urine and their efforts to remove it.

[32] As a result, I cannot find, on a balance of probabilities, that the Tenants have caused the damage to the floor. However, I find that the evidence submitted by the parties establishes, that the Unit required additional cleaning to remove the strong odour of cat urine and remove garbage.

[33] I find that the Landlords can retain $240.00 ($30.00/hr. x 8 hours) from the security deposit for cleaning and garbage removal.

CONCLUSION

[34] The Tenant Application is allowed. The Tenants established a total claim of $3,075.15.

[35] The Landlord Application is allowed in part. The Landlords established a total claim of $240.00.

[36] The net amount owed by the Landlords to the Tenants is $2,835.15.

IT IS THEREFORE ORDERED THAT

1. The Landlords must pay the Tenants $2,835.15 by March 7, 2025.

DATED at Charlottetown, Prince Edward Island, this 7th day of February, 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.