

INTRODUCTION

- [1] The Tenants filed for the return of their security deposit, double the security deposit and compensation for half-a-month's rent in the amount of \$840.00.
- [2] The Landlord filed to claim against the security deposit and additional compensation exceeding the security deposit in the amount of \$1,450.00.

DISPOSITION

- [3] I find that the Landlord will retain the security deposit and applicable interest in the amount of \$609.05.

BACKGROUND

- [4] The Unit is a one-bedroom and one-bathroom cottage located on a campground (the "Residential Property").
- [5] On July 1, 2024 the parties entered into an oral, fixed-term tenancy agreement for the period of July 1, 2024 to October 31, 2024. Rent was \$1,675.00 due on the first day of the month. A security deposit of \$1,675.00 was required, however, only \$600.00 was paid.
- [6] In August 2024 the Tenants relocated to another rental unit on the Residential Property. The terms and conditions of the tenancy agreement continued.
- [7] On September 3, 2024 the Tenants gave the Landlord notice that they were vacating the Unit on September 15, 2024. However, the Tenants vacated the Unit between September 27-29, 2024.
- [8] On October 14, 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 return of the security deposit, double the security deposit and return of rent, in the amount of \$840.00.
- [9] On October 24, 2024 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Rental Office seeking to claim the security deposit and additional compensation in the amount of \$1,450.00.
- [10] On October 28, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for November 28, 2024.
- [11] On November 18, 2024 the Rental Office emailed the parties a 206-page PDF document (the "Evidence Package" or "EP").
- [12] On November 28, 2024 the Landlord joined the teleconference hearing. The Tenants did not call into the teleconference hearing and did not respond when contacted by telephone. The hearing was adjourned due to the Tenants' absence.
- [13] The Tenants contacted the Rental Office about the scheduled hearing and stated that do to scheduling conflicts they could not participate in the teleconference hearing.
- [14] On December 12, 2024 the Rental Office emailed the parties an updated notice of a paper based hearing with a response deadline of January 13, 2025. The parties submitted their written responses which were included in the evidentiary record.
- [15] I have reviewed the evidence submitted and prepared this Order.

ISSUES

- A. Must the Landlord return the security deposit, applicable interest and compensate the Tenants double the security deposit and half-a-month's rent?
- B. Has the Landlord established valid claims to retain the security deposit and for additional compensation?

ANALYSIS**Requirements for a Tenancy Agreement**

- [16] Since April 8, 2023 landlords on Prince Edward Island have been required to prepare a written tenancy agreement containing specific information under subsection 11(1) of the *Residential Tenancy Act* (or the "Act"), which states in part:

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.

- [17] In this case, the tenancy started July 1, 2024 and was an oral, fixed-term agreement (EP188). Tenancy agreement is defined under subsection 1(w) of the Act, which states:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and the provision of services and facilities;

- [18] Despite the Landlord not complying with subsection 11(1) of the Act, I am satisfied that the parties were in a tenancy agreement in accordance with the Act.

A. Must the Landlord return the security deposit, applicable interest and compensate the Tenants double the security deposit and half-a-month's rent?

- [19] For the reasons below, I find that the Landlord does not have to return the security deposit, applicable interest and does not have to compensate the Tenants double the security deposit and half-a-month's rent.

- [20] 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.*

...

- (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.*

- [21] The evidence establishes that on September 3, 2024 the Tenants informed the Landlord in writing that they were vacating the Unit on September 15, 2024. The Tenants stated that the Unit was too small for two people and a dog and they had found cheaper living accommodations (EP125). The Tenants raised other issues regarding the Unit and the tenancy.
- [22] The Tenants paid \$840.00 to the Landlord for fifteen days for September 2024 rent. However, the Tenants did not vacate the Unit until sometime between September 27 and 29, 2024 (EP177). The Tenants' evidence suggests three separate dates where they vacated the Unit: September 27, September 28 and September 29, 2024. The Landlord was uncertain regarding the exact date the Tenants vacated the Unit.

The Return of the Security Deposit & Double the Security Deposit

- [23] The Tenants seek the return of their security deposit, applicable interest and double the security deposit. The Tenants evidence is that the Landlord did not return the security deposit or file an application to keep the security deposit within fifteen days from the end of the tenancy.
- [24] The Landlord's evidence was that the Tenants did not give proper notice and that the Tenants permitted the Landlord to retain the security deposit (EP195).
- [25] I have reviewed the evidence and I find that the evidence establishes that the Landlord was exempted from having to return the security deposit or file an application with the Rental Office to keep the security deposit under clause 40(3)(a) of the Act.
- [26] The Tenants and the Landlord provided the same written correspondence where the Tenants wrote to the Landlord:
- *"Sep 1 till the 15 and the deposit if you want that you can keep they told me that's up to you I am done..."* (EP191 and 195).
- [27] As a result, I find that the Landlord does not have to return the Tenants' security deposit and does not have to compensate the Tenant double the security deposit.

Return of Rent

- [28] For the reasons below, I find that the Tenants have not established a claim for return of rent.
- [29] The Tenants seek return of August 2024 rent in the amount of \$840.00 for no stove or heat in the Unit. The Tenants' evidence suggests that when they moved to the Unit on August 1, 2024 there was no heat and no stove. The stove was delivered on August 16, 2024 and the heat was not installed.
- [30] The Landlord's evidence was that the Tenants moved into the Unit knowing the stove and heat was not installed and completed. The Tenants did not have to move into the Unit and could have remained in their existing rental unit. Both the rental units had sufficient heat for the months of August and September. The Landlord offered an induction cooktop burner and convention oven, but the Tenants refused to accept the offer (EP193).
- [31] I have reviewed the evidence and my findings are as followed:
- [32] The oral tenancy agreement did not specify the terms and conditions of the tenancy regarding heating and appliances. The Tenants were without a stove for approximately sixteen days. Further, the parties' evidence dispute whether or not there was a sufficient heat source in the Unit.

- [33] The Tenants are seeking half a months' rent back in the amount of \$840.00. After reviewing the evidence, I find that the Tenants have not established this claim. Despite the Unit not having a stove for sixteen days, the Landlord's evidence suggests alternative cooking instruments were offered to the Tenants while they waited for the installation of the stove. I find that such compensation is not justified in this case.
- [34] I also find that the parties' evidence is conflicting regarding whether or not there was a sufficient heat source. For this reason, I find that the Tenants have not established their claim which would justify a return of rent. I further note that the two months in question are August and September, which are generally warmer months on Prince Edward Island.
- [35] For these reasons, the Tenant Application is denied.

B. Has the Landlord established valid claims to retain the security deposit and for additional compensation?

- [36] I have already determined above that the Tenants agreed to the Landlord retaining the security deposit. I determine that the Landlord has a valid reason to retain the security deposit under clause 40(3)(a) of the Act.
- [37] The Landlord also sought additional compensation for the cleaning, damage and the outstanding balance of the security deposit.
- [38] 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...

- [39] I have reviewed the parties' evidence, particularly the Tenants' photographic evidence from the end of the tenancy and I find that the Unit's condition was reasonably clean. Further, the Landlord did not provide "before" photographs, which would have established a baseline condition of the Unit. I find that the Landlord has not established a claim for damage to the Unit.
- [40] The Landlord is also seeking the outstanding balance of the security deposit (\$1,075.00). The parties' evidence establishes that the Tenants only paid \$600.00 of the \$1,675.00 security deposit. The Landlord's written submissions do not state why the Landlord requested the outstanding balance.
- [41] Section 15 of the Act states:

A landlord shall not

(a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

- [42] I find that the Landlord cannot request the remaining balance of the security deposit if it was not collected at the time the tenancy was entered into. If the Tenants did not pay the outstanding balance, that could have been a reason for terminating the tenancy.
- [43] As the tenancy has already ended, I find that I cannot order a tenant to pay a security deposit or an outstanding balance of a security deposit to a landlord after the tenancy has ended. I find that this claim is denied.
- [44] For the reasons above, I find that the Landlord Application is allowed in part.

IT IS THEREFORE ORDERED THAT

1. The Landlord will retain the security deposit and applicable interest in the amount of \$609.05.

DATED at Charlottetown, Prince Edward Island, this 24th 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.