

INTRODUCTION

- [1] The Tenant is seeking a return of the security deposit, including interest and double the security deposit.
- [2] The Landlord claims against the Tenant for damage and cleaning. The Landlord seeks compensation in the amount of \$1,217.93.

DISPOSITION

- [3] The Landlord must compensate the Tenant double the security deposit, including interest in the amount of \$2,451.99. The Tenant must compensate the Landlord for damage and cleaning, in the amount of \$1,217.93.
- [4] There is a net amount payable by the Landlord to the Tenant, in the amount of \$1,234.06.

BACKGROUND

- [5] In May 2023 the parties entered into a written, month-to-month tenancy agreement. A \$1,200.00 security deposit was paid. Rent was \$1,200.00 due on the first day of the month.
- [6] On September 30, 2024 the Tenant vacated the Unit and the tenancy ended by mutual agreement.
- [7] On October 23, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Residential Tenancy Office (the "Rental Office") seeking a return of the security deposit, including interest and double the security deposit.
- [8] On October 31, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for December 3, 2024.
- [9] On November 20, 2024 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Rental Office seeking compensation exceeding the security deposit.
- [10] On November 29, 2024 the Rental Office emailed the parties a 45-page PDF document (the "Evidence Package" or "EP"). The Tenant submitted 5-pages of additional evidence (the "Supplementary Evidence"), which was emailed to the Landlord.
- [11] On December 3, 2024 the Landlord joined the hearing, but the Tenant did not join. The Tenant could not be reached and the hearing was adjourned.
- [12] On December 10, 2024 the Rental Office emailed the parties an updated notice of teleconference hearing (the "Notice of Hearing") scheduled for January 21, 2025.
- [13] On January 21, 2025 the Landlord joined the teleconference hearing. Again, the Tenant did not join the hearing. A voicemail message was left for the Tenant, with no response. The Notice of Hearing was sent to the identical email that the Tenant sent documents from, and had communication with the Rental Office. After a ten-minute delay, the hearing proceeded in the Tenant's absence.

ISSUES

- A. Must the Landlord return the Tenant's security deposit, including interest and double the security deposit?
- B. Must the Tenant compensate the Landlord for damage and cleaning the Unit?

ANALYSIS**A. Must the Landlord return the Tenant's security deposit, including interest and double the security deposit?**

- [14] For the reasons below, I find that the Landlord must return the Tenant's security deposit, including interest and double the security deposit.
- [15] The undisputed evidence establishes that the Tenant vacated the Unit on September 30, 2024 and the tenancy ended by mutual agreement. The Landlord found a new tenant for October 1, 2024. The Landlord stated that she forgot to submit an application to the Rental Office within fifteen days.
- [16] 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.*
- [17] The tenancy ended on September 30, 2024. The Landlord did not return the security deposit to the Tenant or file an application with the Rental Office within 15 days (October 15, 2024). 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.
- [18] I note that in Order LR24-10, the Island Regulatory and Appeals Commission (the "Commission") commented as it relates to section 40 of the Act and the consequences of non-compliance:
- "Section 40 of the Act imposes strict requirements on a landlord and failure to meet those requirements incurs a very substantial penalty. The Commission notes that there is no provision in the Act to allow the Director or the Commission to temper or waive the provisions set out in section 40 of the Act...[A]s the Act does not provide the Director or the Commission any discretion to waive the provisions of section 40."*
- [19] 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, including interest on the principal amount, under subsection 40(4) of the Act.

- [20] The Tenant Application is allowed, the Landlord must compensate the Tenant \$2,451.99, calculated as followed:

Item	Amount
Security Deposit	\$1,200.00
Interest (01 MAY 2023 to 28 FEB 2025)	\$51.99
Security Deposit (Double Awarded)	\$1,200.00
Total	\$2,451.99

B. Must the Tenant compensate the Landlord for damage and cleaning the Unit?

- [21] For the reasons below, I find that the Landlord has established valid claims for damage and cleaning, in the amount of \$1,217.93.
- [22] The Landlord stated that at the beginning of the tenancy, the parties agreed that the rent would be reduced by \$200.00 for May 2023, to compensate the Tenant for cleaning the Unit and removing items left by the former tenant (EP18).
- [23] The Landlord stated that on September 19, 2024 the Tenant informed her that she was vacating the Unit at the end of September 2024. The Landlord stated that despite the short notice, she found a new tenant for October 1, 2024.
- [24] The Landlord stated that she inspected the Unit on October 1, 2024 before the new tenant arrived. The Landlord submitted photographs of the Unit during the inspection. The Landlord stated that the Tenant left a lot of items and garbage behind in the Unit. The Landlord stated that she paid the new tenant \$250.00 to clean and remove the Tenant's garbage.
- [25] The Landlord stated that the walls were damaged and required repairs and painting. The Landlord completed a *Form 5 Landlord Condition Inspection Report* (the "Report"). A copy of the Report was emailed to the Tenant on October 6, 2024.
- [26] The Landlord stated that it cost a total of \$1,217.93, calculated as followed:
1. Remove wood strips from walls \$200.00;
 2. Crack filling in walls \$25.00;
 3. Repaint walls from Tenant's painting \$200.00;
 4. Scrub & clean and remove garbage \$250.00;
 5. Dryer filter and support part replaced \$242.93;
 6. Fee for dryer repair \$50.00; and
 7. Paying new tenant to remove garbage \$250.00.
- [27] The Landlord submitted the costs, invoices and receipts for the repairs and cleaning.
- [28] Despite the Tenant not participating in the hearing, the Tenant's documentary evidence suggests that the Tenant disputed the Landlord's claims. The Tenant submitted that the dryer vent was broken when she moved into the Unit.
- [29] I have reviewed the evidence and my findings are as follows.
- [30] 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.*

- [31] I find that the Landlord's evidence establishes that the Unit was below a standard of reasonably clean and that the Unit was left with damage beyond normal wear and tear. The Landlord did not submit into evidence a move-in inspection report or "before" photographs of the Unit. However, the Landlord did submit into evidence text messages with the Tenant, where the parties agreed that the Tenant would clean the Unit for a one-month \$200.00 reduction in rent.
- [32] I find that the Landlord has established valid claims for damage and cleaning, in the amount of \$1,217.93. The Landlord Application is allowed.

CONCLUSION

- [33] The Tenant Application is allowed. The Tenant's established claim is \$2,451.99.
- [34] The Landlord Application is allowed. The Landlord's established claims are \$1,217.93.
- [35] The net amount owed by the Landlord to the Tenant is \$1,234.06.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$1,234.06 by March 28, 2025.

DATED at Charlottetown, Prince Edward Island, this 28th 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.