

INTRODUCTION

- [1] The Landlord claims against the Tenants for December 2024's rent and damages. The Landlord seeks to retain the Tenants' security deposit, in the amount of \$2,400.00. The Landlord also seeks additional compensation in the amount of \$500.00.
- [2] Co-Tenants 1 claim against the Landlord for return of November 2024's rent and the security deposit, in the total amount of \$2,400.00.

DISPOSITION

- [3] I find that the Landlord has established a claim for December 2024's rent and the Landlord will keep the Tenants' security deposit in the amount of \$2,400.00. The Landlord will pay Co-Tenants 1 the security deposit interest, in the amount of \$32.77.
- [4] I find Co-Tenants 1 have not established a claim for a return of rent.

BACKGROUND

- [5] The Unit is one side of a side-by-side duplex which is three-bedrooms and two-bathrooms (the "Residential Property").
- [6] On July 20, 2024 the parties entered into a written, one-year tenancy agreement for the period of August 1, 2024 to July 31, 2025. A \$2,400.00 security deposit was paid on August 1, 2024. Rent was \$2,400.00 due on the first day of the month.
- [7] The Tenants divided the security deposit as followed:
- H.K. and N.B. ("Co-Tenants 1") paid \$1,450.00;
 - N.B and J.A ("Co-Tenants 2") paid \$950.00.
- [8] On October 31, 2024 Co-Tenants 2 vacated the Unit.
- [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") seeking to retain the security deposit.
- [10] On November 30, 2024 Co-Tenants 1 vacated the Unit.
- [11] On December 5, 2024 the Landlord amended the Landlord Application to include a claim seeking additional compensation.
- [12] On December 18, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 23, 2025.
- [13] On December 23, 2024 Co-Tenants 1 filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office seeking a return of the security deposit and compensation.
- [14] On January 3, 2025 Co-Tenants 1 amended the Tenant Application to include Co-Tenants 2 as applicants.
- [15] On January 6, 2025 the Rental Office emailed the parties an updated notice of a teleconference hearing rescheduled for January 23, 2025.

- [16] On January 16, 2025 the Rental Office emailed the parties a 54-page PDF document (the "Evidence Package" or "EP").
- [17] On January 23, 2025 the Landlord, the Landlord's witness (LW1), and Co-Tenants 1 joined the teleconference hearing. The parties confirmed receipt of the Evidence Package and confirmed that all documents submitted to the Rental Office were included.

ISSUES

- A. Has the Landlord established valid claims against the Tenants for rent and damage?
- B. Have Co-Tenants 1 established a valid claim for a return of rent?

ANALYSIS

A. Has the Landlord established valid claims against the Tenants for rent and damage?

December 2024's rent

- [18] The Landlord stated that the tenancy agreement was a fixed-term ending July 2025. However, the Tenants broke the tenancy agreement and vacated the Unit without proper notice. The Landlord stated that the Tenants could not get along. The Landlord stated that he tried to work with the Tenants, having some meetings to try to find a resolution. The issues could not be resolved, which caused Co-Tenants 2 to vacate the Unit on October 31, 2024.
- [19] The Landlord stated that Co-Tenants 2 allowed him to retain their portion of the security deposit (\$950.00) (EP30). The Landlord stated that it was put towards December 2024's rent because Co-Tenants 1 paid November 2024's rent in full. Co-Tenants 1 agreed to continue the tenancy and pay the full rent (EP28).
- [20] The Landlord stated that Co-Tenants 1 could not find suitable sublets and they vacated the Unit on November 30, 2024.
- [21] The Landlord stated that he is seeking to retain the remaining balance and Co-Tenants 1's \$1,450.00 portion of the security deposit for December 2024's rent. The Landlord stated that he has decided to sell the Unit and is not seeking any further rent.
- [22] Co-Tenants 1 stated that Co-Tenants 2 broke the tenancy agreement early. They struggled to find a sublet and struggled financially to pay the full rent. Co-Tenants 1 stated that they had to vacate the Unit at the end of November 2024 because they could not afford the rent.
- [23] I have reviewed the evidence from the parties.
- [24] The procedure for ending a fixed-term tenancy by notice is stated in subsection 55(3) of the *Residential Tenancy Act* (or the "Act"):
- A tenant may end a fixed-term tenancy by giving the landlord a notice of termination effective on a date that*
- (a) *is not earlier than one month after the date the landlord receives the notice;*
- (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and*
- (c) *is the day before the day that rent is payable under the tenancy agreement.*
- [25] I find that the fixed-term was due to expire on July 31, 2025. The Tenants were responsible for the rent up to that date. I find that the Landlord has established a valid claim for December 2024's rent in the amount of \$2,400.00.

[26] 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.*

[27] I find that the Landlord has complied with section 40 of the Act. The Landlord was permitted to keep \$950.00 of the security deposit. The Landlord has established a valid claim for the remaining \$1,450.00 balance. The Landlord can keep the Tenants' security deposit in the amount of \$2,400.00 for December 2024 rent.

Additional Compensation - Damage & Cleaning

[28] The Landlord is seeking \$500.00 in additional compensation for damage and cleaning. The Landlord stated that he inspected the Unit on November 30, 2024. A *Form 5 Landlord Condition Inspection Report* (the "Report") was provided into evidence. The Landlord stated that the Unit was not clean and it cost \$150.00 to clean the Unit. The Landlord stated that there was mould and water damage to the windows which cost \$350.00 to repair.

[29] Co-Tenants 1 stated that there was no damage, was cleaned and the mould was surface mould caused by the rain.

[30] I have reviewed the evidence from the parties.

[31] 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...*

[32] 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."

- [33] In this case, the Landlord did not submit any "before" or "after" photographs of the Unit. The Report discloses some of the issues found at the end of the tenancy. However, there is no move-in inspection report, which was required under subsection 18(1) of the Act.
- [34] I find that the Landlord has not established a baseline condition of the Unit. Therefore, the Landlord has not established his claim for additional compensation for damage and cleaning.
- [35] The Landlord Application is allowed in part. The Landlord can keep the Tenants' security deposit in the total amount of \$2,400.00 for December 2024's rent.
- [36] The Landlord will return to Co-Tenants 1 the interest on the security deposit in the amount of \$32.77.

B. Have Co-Tenants 1 established a valid claim for a return of rent?

- [37] I find that Co-Tenants 1's claim is denied.
- [38] Co-Tenants 1 paid \$2,400.00 for November 2024's rent. They are seeking a return of \$950.00 for November 2024's rent. Co-Tenants 1 stated that the Landlord kept \$950.00 from Co-Tenants 2 security deposit to cover their share of November 2024's rent.
- [39] For the reasons above, I found that the Landlord was allowed to keep the full amount of the security deposit for December 2024's rent. It was not used for November 2024's rent because Co-Tenants 1 paid November 2024's rent in full. Therefore, Co-Tenants 1 are not entitled to a return of November 2024's rent.
- [40] The Tenant Application is denied.

IT IS THEREFORE ORDERED THAT

1. The Landlord will keep the Tenants' security deposit in the amount of \$2,400.00.
2. The Landlord will pay Co-Tenants 1 the interest on the security deposit in the amount of \$32.77 by April 3, 2025.

DATED at Charlottetown, Prince Edward Island, this 4th day of March, 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.