

**INTRODUCTION**

- [1] The Landlord claims against the Tenant for rent owing and damage. The Landlord also seeks to retain the Tenant's security deposit, including interest, in the amount of \$970.62.

**DISPOSITION**

- [2] I find that the Tenant owes the Landlord rent in the amount of \$1,317.74. The Landlord will keep the Tenant's security deposit, including interest, in the amount of \$970.62. The Tenant must pay the Landlord additional compensation of \$347.12 for the rent owing balance. I further find that it is premature to make a determination on claims for damage.

**BACKGROUND**

- [3] The Unit is a rental unit in a 28-unit motel (the "Residential Property").
- [4] In April 2024, the parties entered into an oral month-to-month tenancy agreement for the Unit. A \$950.00 security deposit was paid. Rent of \$950.00 is due on the first day of the month.
- [5] On December 7, 2024 the Landlord's representative (the "Representative") served the Tenant with a first *Form 4(A) Eviction Notice* with an effective date of December 30, 2024 (the "First Notice") for an unreasonable number of occupants and disturbing others. I note that the First Notice's effective date is automatically changed to January 31, 2025 under section 54 of the *Residential Tenancy Act* (or the "Act").
- [6] On January 22, 2025 the Representative served the Tenant with a second *Form 4(A) Eviction Notice* with an effective date of January 22, 2025 (the "Second Notice") for non-payment of rent. I note that the Second Notice's effective date is automatically changed to February 11, 2025 under section 54.
- [7] On February 11, 2025 the Representative filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking vacant possession of the Unit and for the Sheriff to put the Landlord in possession, which is the subject of Order LD25-075. The Application also seeks rent owing and a claim against the security deposit for damage, which is the subject of this decision.
- [8] On February 20, 2025 the Rental Office mailed the parties notice of a teleconference hearing (the "Notice of Hearing") scheduled for March 4, 2025. The Notice of Hearing was also emailed to the Representative and the Representative taped a copy of the Notice of Hearing to the Unit's door.
- [9] On February 28, 2025 the Rental Office emailed the Representative a 14-page PDF document (the "Evidence Package"). The Representative taped a copy of the Evidence Package to the Unit's door.
- [10] On March 4, 2025 the Representative joined the hearing for determination of the Application. The Tenant did not join the hearing. I left a voicemail message for the Tenant with the teleconference information. After a ten-minute delay, the hearing proceeded in the Tenant's absence. The Representative confirmed that all documents submitted to the Rental Office were included in the Evidence Package.

**ISSUES**

- A. Does the Tenant owe rent to the Landlord?
- B. Has the Landlord established a valid claim for damage?

**ANALYSIS****A. Does the Tenant owe rent to the Landlord?**

[11] The undisputed evidence establishes that the Tenant owes one-month of rent (February 2025) in the amount of \$950.00. In Order LD25-075, the tenancy between the parties terminated effective March 12, 2025. Therefore, the amount of rent owing for March 2025 is pro-rated to the amount of \$367.74 (12 days divided by 31 days multiplied by \$950.00).

[12] The total rent owing up to March 12, 2025 is \$1,317.74.

**B. Has the Landlord established a valid claim for damage?**

[13] 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.*

[14] The Representative stated that the Tenant has damaged the Unit's door frame, lock, walls, furniture and appliances. The Representative provided photographs of the current condition of the Unit. The Representative did not submit "before" photographs or a move-in inspection report, required under subsection 18(1) of the Act.

[15] 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."*

[16] Further, the Representative did not submit any receipts, quotes or invoices into evidence. The Representative stated that the work would not be completed until after the Tenant vacated the Unit.

- [17] I have reviewed the undisputed evidence from the Landlord and find that it is premature to make a determination on claims for damage.
- [18] However, I find that the Landlord has a valid claim for rent owing, in the total amount of \$1,317.74. The Landlord will retain the full amount of the security deposit, including interest to offset the rent owing, calculated as followed:

| Item                                               | Amount     |
|----------------------------------------------------|------------|
| Rent Owed (FEB 1/25 and MAR 1-12/25)               | \$1,317.74 |
| Security Deposit & Interest (APR 1/24 – MAR 12/25) | (\$970.62) |
| Total Owed to Landlord                             | \$347.12   |

- [19] The Application is allowed, in part. The Landlord will retain the Tenant's security deposit, including interest for rent owing.
- [20] The Tenant will pay the Landlord the amount of \$347.12 for the rent owing balance, by the timeline below.

### Tenancy Agreement Form

- [21] At the hearing the Representative stated that the tenancy agreement was an oral month-to-month agreement that started April 2024.
- [22] I note that since April 8, 2023 landlords on Prince Edward Island have been required to prepare a written tenancy agreement containing specific information. Subsections 11(1) and (2) of the Act state:

- (1) *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.*
- (2) *The landlord shall ensure that the tenancy agreement complies with the requirements of this Act and the regulations and includes*
  - (a) *the provisions set out in Division 4;*
  - (b) *the correct legal names of the landlord and tenant;*
  - (c) *the address of the rental unit;*
  - (d) *the date the tenancy agreement is entered into;*
  - (e) *the address for service and telephone number of the landlord, or the landlord's agent, and the tenant;*
  - (f) *the services and facilities included in the rent;*
  - (g) *the amount of rent that was charged, and the services and facilities that were provided, to the previous tenant of the rental unit, unless there was no previous tenant;*
  - (h) *the name and contact information of any person the tenant is to contact for emergency repairs; and*
  - (i) *the agreed terms in respect of*
    - (i) *the date on which the tenancy starts,*
    - (ii) *if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis,*
    - (iii) *if the tenancy is a fixed-term tenancy, the date on which the term ends,*
    - (iv) *the amount of rent payable for a specified period,*
    - (v) *the day on which the rent is due and the frequency of payment, and*
    - (vi) *the amount of any security deposit and the date the security deposit was or is required to be paid.*

[23] The Landlord must comply with these requirements in the *Act* and prepare written tenancy agreements for all future tenants. The standard form tenancy agreement (*Form 1 – Standard Form of Tenancy Agreement*) is available on the Rental Office's website.

**IT IS THEREFORE ORDERED THAT**

1. The Landlord will keep the Tenant's security deposit, including interest, in the amount of \$970.62.
2. The Tenant will pay the Landlord the amount of \$347.12 by April 7, 2025.

**DATED** at Charlottetown, Prince Edward Island, this 5th day of March, 2025.

(sgd.) Cody Burke

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**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.