

INTRODUCTION

- [1] The Landlords are ("Z.M." and "E.H.").
- [2] Z.M. claims against the Tenant for damage and cleaning. Z.M. seeks to keep the security deposit, including interest, and additional compensation. E.H. does not support Z.M.'s claim against the Tenant.
- [3] The Tenant is seeking a return of the security deposit, including interest and double the security deposit.

DISPOSITION

- [4] The Landlords must return the Tenant's security deposit, including interest and compensate the Tenant double the security deposit, in the amount \$1,416.19.

BACKGROUND

- [5] In August of 2023, the Tenant and the Landlords entered into a written, month-to-month tenancy agreement for the Unit, which consists of a room rental in a single-family house (the "Residential Property"). Rent was \$721.00 due on the first day of the month. A \$700.00 security deposit was paid in March of 2024.
- [6] A copy of the tenancy agreement was not provided into evidence.
- [7] On August 1, 2024 the Rental Office issued Order LD24-247 ordering that the tenancy be terminated effective 5:00 p.m. on October 31, 2024.
- [8] On October 31, 2024 the Tenant vacated the Residential Property and the tenancy ended.
- [9] On Friday, November 15, 2024 at 11:03 p.m. Z.M. filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office") by email. The Landlord Application sought to keep the security deposit, including interest.
- [10] On November 19, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office. The Tenant Application seeks the return of the security deposit, including interest and double the security deposit.
- [11] On December 16, 2024, Z.M. amended the Landlord Application to include a claim against the Tenant for additional compensation exceeding the security deposit. Collectively, the Landlord Application and the Tenant Application are referred to as "the Applications."
- [12] E.H. was named in the amended Landlord Application, however, E.H. stated that he did not sign the Landlord Application and did not support Z.M.'s claims against the Tenant.
- [13] On December 17, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 21, 2025.
- [14] On January 14, 2025 the Rental Office emailed the parties a 39-page PDF document (the "Evidence Package" or "EP").
- [15] On January 21, 2025 the Tenant and E.H. joined the hearing. Z.M. did not join the hearing. Z.M. could not be reached and the hearing was adjourned.
- [16] On January 22, 2025 the Rental Office emailed the parties an updated notice of teleconference hearing scheduled for February 6, 2025.

- [17] On February 6, 2025 the Tenant, E.H and Z.M. joined the hearing for determination of the Applications. The parties confirmed receipt of the Evidence Package and confirmed that all documents submitted to the Rental Office were included.
- [18] After the hearing, I allowed the parties to submit additional evidence with a deadline for submissions and responses by February 13, 2025.
- [19] On February 13, 2025 the parties submitted their additional evidence, which included 21-pages of documents and four video recordings submitted by Z.M., one email response, and one video-recording submitted by the Tenant (the "Additional Evidence"). The Additional Evidence was provided to each party via email and TitanFile.

ISSUES

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

ANALYSIS

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

- [20] For the reasons below, I find that the Landlords must return the Tenant's security deposit, including interest and double the security deposit.
- [21] It is undisputed that the tenancy ended effective October 31, 2024 in accordance with Rental Office Order LD24-247. The Tenant vacated the Unit by the effective date.
- [22] 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.*

- [23] Z.M. stated that he filed the Landlord Application on the fifteenth day (November 15, 2024).
- [24] Z.M. stated that the security deposit was returned to the Tenant on November 4, 2024.
- [25] The Tenant and E.H. disputed that the security deposit was returned.
- [26] E.H. stated that on November 4, 2024 the Tenant was paid \$721.00 as compensation required under section 72 of the Act (EP17). The Tenant agreed with E.H.'s submission.
- [27] The Tenant stated that Z.M. needed to file the Landlord Application by 5:00 p.m. on the fifteenth day. The Tenant stated that Z.M. did not file the Landlord Application until 11:03 p.m., which is considered past the 15-day deadline.
- [28] I have reviewed the parties' submissions.
- [29] Subsection 75(1) of the Act restricts a landlord or tenant from only filing an application during or within six months after termination of a tenancy agreement. Time is not mentioned in this section.
- [30] The Act references "5:00 p.m." in clause 39(1) regarding the time to vacate and in clause 87(4) regarding service of documents electronically. Neither reference filing documents with the Rental Office.
- [31] As the Act does not specifically reference a time for filing, I refer to the *Interpretation Act*. Particularly, clauses 2 and 33(7) state:

Application

Every provision of this Act applies to every enactment, whenever enacted, unless a contrary intention appears in this Act or in the enactment.

Business offices

A time limit for registering or filing documents or for doing anything else that falls or expires on a day on which the place for doing so is not open during its regular hours of business is extended to include the next day the place is open during its regular hours of business.

- [32] I note that when the Landlord Application was filed with the Rental Office, the regular hours of business were 8:00 a.m. to 4:30 p.m. Therefore, 4:30 p.m. would be the deadline to file on that date.
- [33] The evidence establishes that Z.M. filed the Landlord Application on Friday, November 15, 2024 at 11:03 p.m. electronically with the Rental Office. There was no civic holiday on Friday, November 15, 2024 and the Rental Office was open from its regular hours of operation (8:00 a.m. to 4:30 p.m.).
- [34] In these circumstances, Z.M. would have had to file the Landlord Application by 4:30 p.m. to have it received by the Rental Office within the Act's fifteen-day statutory timeline. Any time after 4:30 p.m. would have been received the following day the Rental Office was opened.
- [35] I find that the evidence establishes that the security deposit was not returned to the Tenant and the Landlord Application was not filed within fifteen days (November 15, 2024 by 4:30 p.m.). There are no earlier Rental Office decisions authorizing the Landlords to retain the Tenant's 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.

- [36] As a result, I find that the Landlords did not comply with the legislated section 40 requirements for retaining a security deposit. Therefore, by operation of law, the Landlords must compensate the Tenant double the security deposit, including interest on the principal amount, under subsection 40(4) of the Act.
- [37] The Tenant Application is allowed; the Landlords must compensate the Tenant \$1,416.19, calculated as followed:

Item	Amount
Security Deposit	\$700.00
Interest (01 MAR 2024 to 07 MAR 2025)	\$16.19
Security Deposit (Double Awarded)	\$700.00
Total	\$1,416.19

B. Must the Tenant compensate Z.M. for cleaning and damage?

- [38] Z.M. stated that the Unit was uncleaned, with a lot of garbage and items left on the Residential Property. Z.M. stated that it took 15-hours to mop, scrub, wipe down and clean the Unit. Z.M. stated that he had to remove garbage from the Residential Property, and that there was a strong smell of cat urine. Z.M. stated that he is seeking compensation for the 15-hours of work at the minimum wage (\$16.00 per hour).
- [39] Z.M. stated that the Unit had significant damage, including the dishwasher, washing machine, taps, sump pump, BBQ and carpets. Z.M. stated that the lawn was not cut which was the Tenant's responsibility and that the windows were left open and the thermostat was left on high. Z.M. stated that the estimated cost to repair the Unit was between \$590.00 and \$1,140.00.
- [40] The Tenant denied Z.M.'s claims for cleaning and damage.
- [41] The Tenant stated that the appliances, including the dishwasher, were not working throughout the tenancy. The Tenant stated that he informed Z.M. of these issues. The Tenant stated that for the last few months of the tenancy, Z.M. would show up and inspect the Unit every two weeks.
- [42] The Tenant stated that Z.M.'s photographs in the Additional Evidence were taken prior to him moving out of the Unit. The Tenant stated that he cleaned, scrubbed and mopped the Unit. The Tenant stated that the garbage on the Residential Property was not his garbage and the items from the shed were not his belongings. The Tenant stated that the tires were removed from the Unit the following day that photograph in evidence was taken. The Tenant stated that Z.M.'s evidence does not support his claims for cleaning and damage.
- [43] I have reviewed the parties' evidence.
- [44] 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...*
- [45] 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."

[46] In this case, Z.M. did not submit "before" photographs of the Unit prior to the start of the tenancy. The parties disputed whether the photographs were taken during the tenancy or after the tenancy ended. I note that the photographs submitted into the Additional Evidence are not date and time stamped.

[47] Further, no pre-tenancy and post-tenancy inspection reports were completed. The tenancy started in August 2023. Since April 8, 2023 landlords in Prince Edward Island have been required to complete a pre-tenancy and post tenancy inspection report. The inspection report on the approved form (*Form 5 Landlord Condition Inspection Report*) can be found on the Rental Office's website.

[48] Clauses 18(1) and 38(1) of the Act state:

The landlord and tenant, or their authorized agents, shall inspect the condition of the rental unit in each other's presence on the day the tenant is entitled to possession of the rental unit or on another day agreed on by them.

The landlord and tenant, or their authorized agents, shall inspect the condition of the rental unit in each other's presence before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit; or
- (b) on another day agreed upon by them.

[49] The Commission in Order LR25-12 commented on the importance of having a pre-tenancy and post-tenancy inspection. The Commission stated:

"The Commission finds that the Landlord failed to comply with section 18 and section 38 statutory requirement for pre-tenancy and post-tenancy inspections. These requirements are in place to protect both landlords and tenants and to provide the Rental Office and the Commission with the best possible evidence of the condition of a rental unit at the start and at the end of the tenancy. A deterioration in the condition of the unit during the tenancy will then be more clearly apparent."

[50] I find that without the required inspection reports (see subsections 18(3) and 38(3)), or without date and time stamped "before" and "after" photographs of the Unit, Z.M. has not established a baseline condition of the Unit.

[51] The onus to establish such damage and who caused it rests on the party seeking the damage claim. The claim must be supported by objective and compelling evidence with respect to who caused the damage and how much it costs to repair.

[52] I am not satisfied that Z.M. has established his claims based on the evidence presented. Therefore, the Landlord Application is denied.

CONCLUSION

[53] The Tenant Application is allowed; the Landlords must compensate the Tenant \$1,416.19.

[54] The Landlord Application is denied.

IT IS THEREFORE ORDERED THAT

1. The Landlords must pay the Tenant \$1,416.19 by April 7, 2025.

DATED at Charlottetown, Prince Edward Island, this 7th 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.