

INTRODUCTION

- [1] The Tenant seeks the return of the security deposit, including interest and double the security deposit. The Tenant also seeks a return of rent for an unlawful rent increase.
- [2] The Landlord seeks to retain the security deposit, including interest and additional compensation for rent owed and cleaning.

DISPOSITION

- [3] I find that the Landlord will pay the Tenant the security deposit, including interest and double the security deposit. The Tenant has also established that the Landlord unlawfully increased the rent from January 2023 onwards.
- [4] I find that the Landlord has established rent owed for October 2024 and cleaning expenses. This amount is offset against the Tenant's proven claims.

BACKGROUND

- [5] The Unit is a single bedroom in a four-bedroom and three-bathroom single-family dwelling (the "Residential Property").
- [6] On December 21, 2021 the parties entered into an oral tenancy agreement for the Unit. The Tenant paid a \$600.00 security deposit.
- [7] In January 2022 the Tenant paid rent in the amount of \$600.00, which was due on the first day of the month.
- [8] In February 2022 the Tenant moved into the Unit.
- [9] On December 4, 2022 the parties signed a written, fixed-term tenancy agreement for the period of January 1, 2023 to December 31, 2023. Rent increased to \$650.00 due on the first day of the month.
- [10] From May to August 2023 the Tenant vacated the Unit and left Canada. The Landlord used the Unit for Airbnb rentals during this period.
- [11] In September, 2023 the Tenant returned to the Unit and the rent increased to \$750.00.
- [12] On January 1, 2024 the fixed-term expired and the tenancy continued on a month-to-month basis.
- [13] On April 30, 2024 the Tenant vacated and left Canada until September 8, 2024. The Landlord used the Unit for Airbnb rentals during this period.
- [14] On September 8, 2024 the Tenant returned to the Unit and the rent increased to \$800.00.
- [15] On September 10, 2024 the Tenant vacated the Unit.
- [16] On October 25, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* with the Residential Tenancy Office (the "Rental Office") seeking a return of the security deposit, including interest and double the security deposit. On November 18, 2024 the Tenant amended this application to include a monetary order against the Landlord for an unlawful rent increase (the "Tenant Application").
- [17] On December 10, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 30, 2025.

- [18] On January 8, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* with the Rental Office seeking to retain the Tenant's security deposit and additional compensation exceeding the Tenant's security deposit. On January 10, 2025 the Landlord amended this application to include a monetary order against the Tenant for rent owed (the "Landlord Application").
- [19] On January 14, 2025 the Rental Office mailed and emailed the parties an updated notice of a teleconference hearing scheduled for January 30, 2025.
- [20] On January 24, 2025 the Rental Office emailed the parties a 26-page PDF document (the "Evidence Package" or "EP").
- [21] On January 30, 2025 the Rental Office was delayed opening due to poor weather. The teleconference hearing was rescheduled to January 31, 2025.
- [22] On January 31, 2025 the Tenant, the Landlord and the Landlord's translator joined the teleconference hearing. The parties confirmed receipt of the Evidence Package and confirmed that all documents submitted to the Rental Office were included.
- [23] During the hearing, the Tenant submitted one-page of additional evidence (the "Additional Evidence"), which was provided to the Landlord.

PRELIMINARY MATTER

- [24] There was an error on the Landlord Application. The claim for rent owed is from May to August 2023 and May to August 2024; and does not include May to August 2022. The Landlord Application is amended under clause 80(3)(f) of the *Residential Tenancy Act* (or the "Act").

ISSUES

- A. Must the Landlord return the Tenant's security deposit, interest double the security deposit and return rent due to an unlawful rent increase?
- B. Has the Landlord established valid claims against the Tenant for rent owed and cleaning?

ANALYSIS

A. Must the Landlord return the Tenant's security deposit, interest, double the security deposit and return rent due to an unlawful rent increase?

- [25] The procedure for ending a month-to-month tenancy by notice is stated in subsection 55(2) of the Act:

A tenant may end a month-to-month or other periodic 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; and*
(b) *is the day before the day that rent is payable under the tenancy agreement.*

- [26] The parties' undisputed evidence establishes that on September 10, 2024, the Tenant gave notice to the Landlord and vacated the Unit. I note that providing notice on September 10, 2024 would have ended the tenancy on October 31, 2024.
- [27] 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*

[28] The evidence establishes that the security deposit was not returned to the Tenant and the Landlord Application was not filed with the Rental Office within fifteen days (November 15, 2024). There are no earlier Rental Office decisions authorizing the Landlord to retain the Tenant’s security deposit and at the end of the tenancy, the parties did not enter into a written agreement permitting the Landlord to retain the security deposit.

[29] As a result, I find that the Landlord did not comply with the legislated section 40 requirements for retaining the security deposit. Therefore, by operation of law, the Landlord must compensate the Tenant double the security deposit, including interest on the original amount, under subsection 40(4) of the Act.

[30] This claim is allowed in the Tenant Application; the Landlord must compensate the Tenant \$1,231.46, calculated as followed:

Item	Amount
Security Deposit	\$600.00
Interest (21 DEC 2021 to 12 MAR 2025)	\$31.46
Security Deposit (Double Awarded)	\$600.00
Total	\$1,231.46

[31] The Tenant is also seeking a return of rent for an unlawful rent increase. The Tenant Application requests \$950.00 (\$100.00 x 9 months + \$50.00 for September 2024).

[32] The Tenant stated that in 2022 he paid \$625.00 in rent each month. The Landlord could not recall the rent rate for 2022. The Additional Evidence provided by the Tenant establishes that from March to December 2022, the Tenant paid \$600.00 a month in rent. This was the same amount paid for the security deposit at the beginning of the tenancy.

[33] In December 2022 the parties signed a written, fixed-term tenancy agreement. The rent increased to \$650.00 and no services were changed from the previous oral agreement. The Tenant provided e-Transfers showing his rent payments in 2023 (EP13).

- [34] The Tenant stated that he is a student and in the Summer of 2023 he vacated the Unit and returned home. The Tenant stated that the Landlord orally agreed that he would not pay rent from May to August and the Unit would be rented as an Airbnb rental.
- [35] The Tenant stated that when he returned in September 2023 the rent increased to \$750.00 (EP13).
- [36] The Tenant stated that in May 2024 he vacated the Unit and returned home. The Tenant stated that he did not pay rent from May to August, and the Landlord rented the Unit as an Airbnb rental.
- [37] The Tenant stated that when he returned in September 2024 the rent increased to \$800.00 (EP13). The Tenant stated that he paid September 2024's rent twice in error. The parties agreed that one of the \$800.00 payments was returned to the Tenant.
- [38] The Tenant stated that he is seeking \$950.00 in returned rent due to unlawful rent increases. The Tenant stated that he paid an unlawful \$100.00 increase from September 2023 to April 2024 and a further unlawful increase of \$50.00 in September 2024.
- [39] The Landlord did not dispute the rent increases and stated that she was not familiar with the rent control rules and regulations.
- [40] Subsections 47(1) and (2) of the Act state:
- (1) *A landlord shall not increase rent except in accordance with this Part.*
 - (2) *The obligations of a landlord under this Part run with the rental unit and not the tenant.*
- [41] I have reviewed the parties' evidence. I find that the evidence establishes that when the tenancy started in December 2021, the monthly rent was \$600.00. In December 2022 the parties signed a written, fixed-term agreement. The services in the written agreement did not change from the oral agreement and the Unit was still a room rental with shared common areas. However, the rent increased to \$650.00, which was an 8.3% increase. This rent increase was not in compliance with subsection 47(1).
- [42] In September 2023, the rent increased again to \$750.00. This rent increase was not in compliance with subsection 47(1).
- [43] In September 2024, the rent increased again to \$800.00. This rent increase was not in compliance with subsection 47(1).
- [44] The Landlord did not provide notice or increase the rent by the annual allowable guideline. The Landlord also did not file an application with the Rental Office seeking an additional rent increase above the allowable annual guideline.
- [45] I find that the Landlord unlawfully increased the rent. This claim in the Tenant Application is allowed.
- [46] The Tenant Application is seeking \$950.00. However, the evidence establishes that the unlawful rent increase started January 1, 2023 when the rent increased from \$600.00 to \$650.00. This was an 8.3% rent increase and the allowable annual guideline for 2023 was 0.0% (see subsection 49(4) of the Act).
- [47] I find that the evidence establishes that the Landlord must return rent to the Tenant for an unlawful rent increase in the amount of \$1,600.00, calculated as follows:

Period of Time	Rent Paid	Unlawful Increase	Total
JAN'22 – DEC'22	\$600.00	\$0.00	\$0.00
JAN'23 – APR'23	\$650.00	\$50.00 x 4	\$200.00
SEP'23 – APR'24	\$750.00	\$150.00 x 8	\$1,200.00
SEP'24	\$800.00	\$200.00 x 1	\$200.00
Total:			\$1,600.00

[48] The Tenant Application is allowed. The Tenant's total claim is \$2,831.46.

B. Has the Landlord established valid claims against the Tenant for rent owed and cleaning?

[49] The Landlord is seeking rent owed for the months of May to August 2023 and May to August 2024.

[50] I have already determined that the lawful rent for the Unit is \$600.00. This means that the Landlord is seeking \$4,800.00 (\$600.00 x 8 months) for rent owed.

[51] The parties' evidence establishes that the Tenant vacated the Unit from May 2023 to September 2023 and then again in May 2024 to September 2024.

[52] The Tenant stated that the parties had an oral agreement that the Landlord would not charge rent for these months and would rent the Unit as an Airbnb rental. The Landlord disputed the oral agreement, however, admitted that she did rent the Unit as an Airbnb rental for the months of July and August.

[53] I have reviewed the evidence, and I find that the Tenant does not owe rent for May 2023 to September 2023 or May 2024 to September 2024.

[54] I find that the evidence establishes that the parties had an oral agreement that the Tenant would vacate the Unit during the Summer months and return back to his home country. Despite the Landlord disputing an oral agreement, I find that the Landlord provided a written submission which stated:

'I am writing a letter that trying to describ as a truth things about [the Tenant] and me agreement with [the Unit] despite my English is limited that he was stay my house few years until September 8TH 2024 and I treat him like my kids what give him a winner coat and bike ride to school and give him furniture for his study life in Canada because I know what is a difficult for international students even I agree he didn't pay a rent during he back his country for summer vacation and I have to do short term rent in the Summer.' [EP15]

[55] However, as noted above, the Tenant provided the Landlord insufficient notice prior to vacating the Unit. Providing notice on September 10, 2024 in a month-to-month agreement would have ended the tenancy on October 31, 2024. The Landlord stated that she lost the opportunity to find another tenant to rent the Unit because of the insufficient notice and having to clean the Unit.

[56] I find that the evidence establishes that the Landlord will keep September 2024's rent in the amount of \$600.00. Further, the Tenant will pay the Landlord \$600.00 for October 2024's rent. This claim in the Landlord Application is allowed in part.

[57] The Landlord is also seeking \$1,000.00 for cleaning the Unit's bed. The Landlord submitted photographs of the bed taken in mid-September 2024.

[58] The Tenant disputed that the bed was damaged and stated that the bed was just stained and dirty. The Tenant stated that the cost to clean the bed would only be between \$250.00 and \$275.00.

[59] 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...

[60] I find that the evidence establishes that the condition of the bed at the end of the tenancy was below the standard of reasonably clean. The Landlord did not submit objective and direct evidence to support the \$1,000.00 cost associated with the cleaning the bed. I accept the Tenant's evidence that a reasonable cost to clean the bed is \$250.00. This claim in the Landlord Application is allowed in part.

[61] The Landlord Application is allowed in part. The Landlord's total claim is \$850.00.

CONCLUSION

[62] The Tenant Application is allowed, the Tenant established a valid claim in the amount of \$2,831.46.

[63] The Landlord Application is allowed in part. The Landlord established a valid claim in the amount of \$850.00.

[64] Due to the offsets in this Order, the Landlord must compensate the Tenant \$1,981.46 by the timeline below.

[65] The Landlord will not charge a monthly rent greater than \$600.00 for the Unit until the Landlord increases the rent in accordance with the *Residential Tenancy Act*.

IT IS THEREFORE ORDERED THAT

1. The Landlord will pay the Tenant \$1,981.46 by May 12, 2025.
2. The Landlord will not charge a monthly rent greater than \$600.00 for the Unit until the Landlord increases the rent in accordance with the *Residential Tenancy Act*.

DATED at Charlottetown, Prince Edward Island, this 12th 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.