

INTRODUCTION

- [1] The Landlord seeks to keep the security deposit, including interest and additional compensation for cleaning and damage.
- [2] The Tenant seeks the return of the security deposit, interest, double the security deposit, and compensation for out-of-pocket expenses for bug spray and traps. The Tenant also seeks a return of rent for an unlawful rent increase and overpayment of the security deposit.

DISPOSITION

- [3] The Landlord will keep the Tenant's security deposit, including interest for cleaning and damage, in the amount of \$1,209.11.

BACKGROUND

- [4] The Unit is a 4-bedroom and 1-bathroom half of a side-by-side duplex (the "Residential Property").
- [5] On January 16, 2023 the Tenant paid the Landlord a \$1,150.00 security deposit in cash.
- [6] On February 1, 2023 the parties entered into a written, one-year fixed-term tenancy agreement that expired on January 31, 2024. The tenancy then continued on a month-to-month basis. Rent was due on the first day of the month, and rent was paid by Social Assistance. The amount is disputed by the parties.
- [7] The Tenant argues the lawful rent is \$1,100.00. The Landlord's representatives (the "Representatives") argue the lawful rent is \$1,150.00.
- [8] On February 1, 2024 the rent increased to \$1,184.50, which is a 3.0% increase (the allowable annual guideline set for 2024).
- [9] On September 19, 2024 the parties completed a *Form 5 Landlord Condition Inspection Report* (the "Report").
- [10] On September 27, 2024 the Representatives served the Tenant a *Form 4(B) Eviction Notice* (the "Notice") effective November 30, 2024 for buyer's use of the Unit.
- [11] On November 30, 2024 the Tenant vacated the Unit and the tenancy ended because of the Notice.
- [12] On December 2, 2024 the Residential Property was sold.
- [13] On December 16, 2024 the Representatives filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office") seeking to keep the security deposit, interest and additional compensation exceeding the security deposit for cleaning and damage.
- [14] On December 17, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office seeking the return of the security deposit, interest, double the security deposit and compensation. The Tenant Application also seeks a return of rent for an unlawful rent increase and overpayment of the security deposit.
- [15] On January 20, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for February 18, 2025.
- [16] On February 14, 2025 the Rental Office emailed the parties a 185-page PDF document and 1-video recording (the "Evidence Package" or "EP").

- [17] On February 18, 2025 the hearing was adjourned because the Rental Office was delayed from opening due to a winter storm.
- [18] On February 19, 2025 the Representatives ("L.M."), ("E.M.") ("M.B.") and the Tenant joined the teleconference hearing. The parties confirmed receipt of the Evidence Package and confirmed that all evidence submitted to the Rental Office was included.

PRELIMINARY MATTER

- [19] During the teleconference hearing, the Tenant withdrew her \$800.00 claim against the Landlord for compensation for a camper. The Tenant Application is amended under clause 80(3)(f) of the *Residential Tenancy Act* (or the "Act").

ISSUES

- A. Did the Landlord file the Landlord Application within fifteen days from the end of the tenancy?
- B. Has the Landlord established valid claims against the Tenant for cleaning and damage?
- C. Must the Landlord return the Tenant's security deposit, interest, double the security deposit, compensate the Tenant for out-of-pocket expenses and return rent due to an unlawful rent increase and overpayment of the security deposit?

ANALYSIS

- A. **Did the Landlord file the Landlord Application within fifteen days from the end of the tenancy?**

- [20] 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*

- [21] The parties' evidence establishes that the tenancy ended on November 30, 2024 due to the Notice. The Tenant left some belongings in the Unit which were removed on December 3, 2024.

- [22] The Tenant argues that the Landlord had until December 15, 2024 to file the Landlord Application with the Rental Office. The Tenant stated that the Landlord must pay her double the security deposit.
- [23] The Representatives argue that the Landlord Application was filed with the Rental Office by email on December 15, 2024.
- [24] I have reviewed the parties' evidence.
- [25] In this case the fifteenth day after the tenancy ended was a Sunday. The Act must be interpreted in accordance with the *Interpretation Act*, which states as follows in subsection 33(6):

A time limit for the doing of anything that falls or expires on a holiday is extended to include the next day that is not a holiday.

- [26] Subsection 1(w) of the Schedule to the *Interpretation Act* defines "holiday" to include a Sunday. Therefore, the last day for the Landlord to file an application with the Rental Office was extended by operation of law from Sunday, December 15, 2024 to Monday, December 16, 2024.
- [27] I find that the Representatives filed the Landlord Application on Monday, December 16, 2024 by email.
- [28] For these reasons, the Landlord did in fact comply with section 40 by filing the Landlord Application with the Rental Office on December 16, 2024. The Landlord is not required to pay the Tenant double the security deposit.
- [29] Despite this finding, I will make a further determination later in this decision on whether or not the Landlord has established valid claims to keep the Tenant's security deposit.

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

- [30] The Landlord claims against the Tenant for damage and cleaning, in the amount of \$3,788.75. The Landlord seeks to keep the Tenant's security deposit, including interest to offset this amount.
- [31] The Landlord Application seeks compensation for cleaning and damage claims, as follows:

1. Cleaning (16 hrs. x 3 people x \$30.00/hr.):	\$1,440.00;
2. Three screen repairs:	\$30.00;
3. Wall repairs (8 hrs. x 2 people x \$50.00/hr.):	\$800.00;
4. Repair drawers & doors (4 hrs. x 50.00/hr.):	\$200.00;
5. Damage to siding (4 hrs. x \$50.00/hr.):	\$200.00;
6. Lawn repair:	\$400.00;
7. <u>Spray for cockroaches:</u>	<u>\$718.75.</u>
Total:	\$3,788.75

- [32] 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...*

Cleaning

- [33] The Representatives submitted numerous photographs of the Residential Property and the Unit. The Representatives stated that the photographs of the Residential Property's yard were taken during the September 19, 2024 inspection (EP21-23), and the photographs of the Unit were taken on December 2, 2024 after the Tenant vacated the Unit (EP24-98).
- [34] The Representatives stated that the Unit was very dirty, which required cleaning the appliances, walls, floors and removing a lot of garbage from the Unit and the Residential Property's yard. The Representatives stated that they cleaned the Unit over the period of a few weeks. The Representatives stated that it took 16.0 hours to clean the Unit.
- [35] The Representatives stated that no cleaning invoice was submitted into evidence because the cleaning was paid for by the Landlord in payroll.
- [36] The Tenant denied the Landlord's claim for cleaning the Unit. The Tenant stated that she cleaned the Unit before vacating. The Tenant stated that some of the appliances may have been dirty because she did not move the appliances. The Tenant provided photographs and one-video recording of the Unit at the end of the tenancy (EP127-136; 145-147). The Tenant also provided some photographs of the Unit and the Residential Property during the tenancy (EP179-185).
- [37] 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."

- [38] In this case, the Landlord did not submit photographs of the Unit or the Residential Property prior to the start of the tenancy. Further, a pre-tenancy inspection report would have been helpful in assisting in establishing a baseline condition of the Unit or the Residential Property. However, I note that in this case, a pre-tenancy and post-tenancy inspection report was not obligatory under section 109 of the Act.
- [39] I have reviewed the parties' evidence and I find that the Unit's appliances were below the standard of reasonably clean. The parties' provided documentary evidence which conflicts with the condition of the Unit at the end of the tenancy. I note that the standard is reasonably clean and not professionally clean. The Landlord has failed to establish a baseline condition of the Unit. The Tenant's evidence, including the video-recording, suggests that the overall condition of the Unit was reasonably clean, with the exception of the appliances. Therefore, I award the Landlord \$270.00 for cleaning (\$30.00/hr. x 3 people x 3 hours). This claim is allowed in part.

Damage & Cockroach Remediation

- [40] The Landlord claims against the Tenant for damage beyond normal wear and tear. This damage includes: screens, walls, drawers, doors, siding and the lawn. The Landlord's evidence is summarized above.
- [41] M.B. stated that he witnessed the damage to the walls, drawers and the doors of the Unit. M.B. stated that the walls were damaged beyond normal wear and tear. The Tenant's daughters room was painted a different colour and there were decorative stickers left on the Unit's walls. M.B. stated that he had to paint and prime the walls. M.B. stated that the walls were not in that condition at the beginning of the tenancy.

- [42] The Representatives stated that the siding and the lawn will need to be repaired in the Spring.
- [43] The Representatives stated that the Tenant's guests brought cockroaches into the Unit. The Representatives stated that the Tenant never brought it to their attention. The cockroach infestation was only discovered when the Unit was being shown to a prospective buyer. The Representatives stated that the cockroach issue was ongoing throughout the Summer of 2024. The Residential Property received three sprays (September, October and December 2024). The Representatives provided a copy of the invoice into evidence (EP18).
- [44] The Tenant stated that her daughter painted her room without permission. The Tenant denied the damage to the screens, drawers and doors and stated that it was normal wear and tear. The Tenant denied causing damage to the Residential Property's siding. The Tenant stated that the damage to the siding was caused by water damage and mould. The Tenant stated that there were tire tracks on the lawn, however, it rained a lot during that period of time. The tracks were from moving out of the Residential Property.
- [45] The Tenant stated that she never had cockroaches throughout the tenancy. The Tenant stated that she was traveling out of the province in August 2024 and that she told the Representatives they could spray while she was away. The Tenant stated that the Representatives did not spray the Residential Property until September 2024. The Tenant stated that she was told that a house inspector needed to inspect the Residential Property before any extermination could take place. The Tenant stated that she purchased her own cockroach remediation. The Tenant stated that she did not cause the delays to remediate the cockroach infestation.
- [46] I have reviewed the parties' evidence and I find that the Tenant and/or the Tenant's guests have left the Unit damaged beyond normal wear and tear. I find that the Landlord's evidence establishes the Unit's walls were damaged and required paint and primer. Particularly, the Landlord's photographic evidence of the condition of the walls at the end of the tenancy, along with M.B.'s direct evidence describing the condition of the walls pre-tenancy and post-tenancy establishes a valid claim.
- [47] Further, I find that the evidence establishes that the Unit's drawers and doors required paint and primer. Such repairs were necessary as the condition of the drawers and doors were below the standard of reasonable wear and tear.
- [48] I find that the Landlord's evidence does not establish undue damage caused by the Tenant to the screens, siding and cockroach infestation. Particularly, the Landlord has not established a baseline condition for these items and the evidence does not establish a causal link between the Tenant and the damaged items.
- [49] I note that the evidence establishes that the lawn was damaged at the end of the tenancy. However, the Representatives stated that the repairs to the lawn had not been done, and the Landlord no longer owns the Residential Property. Further, the Representatives stated that there were no adjustments in the purchase and sale agreement to account for the lawn damage and/or the siding damage. Therefore, these claims are denied.
- [50] The Landlord's established claims for damage have a requested compensation in the amount of \$1,000.00 (\$800.00 + \$200.00).
- [51] The Commission in Order LR24-06 commented on the principle of betterment. The basic principle at common law is that a party should not be put in a better position than they would have been had the wrongdoing not occurred.

[52] In this case, I find that the Landlord is entitled to \$939.11 for damage. This claim along with the cleaning claim is covered by the Tenant's security deposit, including interest. Therefore, the Landlord can keep the Tenant's security deposit, including interest for cleaning and damage, in the amount of \$1,209.11.

[53] The Landlord Application is allowed in part.

C. Must the Landlord return the Tenant's security deposit, interest, double the security deposit, compensate the Tenant for out-of-pocket expenses and return rent due to an unlawful rent increase and overpayment of the security deposit?

[54] For the reasons above, I have already found that the Tenant is not entitled to double the security deposit and that the Landlord has established valid claims to keep the full amount of the Tenant's security deposit, including interest. Therefore, these claims are denied.

[55] The Tenant seeks \$200.00 for out-of-pocket expenses for cockroach remediation. The Tenant also seeks return of rent due to an unlawful rent increase and overpayment of the security deposit.

Cockroach Remediation

[56] The Tenant stated that the Representatives delayed remediation for a cockroach infestation which resulted in her needing to purchase her own sprays.

[57] I find that the Tenant did not provide receipts, invoices or any objective or direct evidence to corroborate this \$200.00 expense. Further, I find that the parties' evidence establishes that the Residential Property was sprayed three times (September, October and December 2024). The evidence also suggests that the Representatives did not become aware of the infestation until August 2024. I find that the evidence does not establish that the Landlord failed to treat the Residential Property in a reasonable time.

[58] I find that the Tenant has not established her claim.

Unlawful Rent Increase & Overpayment of the Security Deposit

[59] For the reasons below, I find that the evidence does not establish an unlawful rent increase.

[60] The Tenant stated that the tenancy agreement states that the rent is \$1,100.00. The Tenant stated that Social Assistance pays her rent each month. The Tenant provided a signed letter from her Social Supports Coordinator which confirmed that Social Assistance paid \$1,150.00 effective February 1, 2023 and then \$1,184.50 effective February 1, 2024 (EP177).

[61] The Tenant stated that she was unaware of the amount of rent being paid because Social Assistance pays the Landlord directly each month.

[62] The Representatives stated that there was a clerical error in the tenancy agreement. The rent was always \$1,150.00. M.B. stated that the Tenant was informed that the rent would be \$1,150.00 prior to moving into the Unit (EP138). M.B. stated that he spoke with Social Assistance at the beginning of the tenancy, which is why they were paying rent of \$1,150.00.

[63] I have reviewed the parties' evidence and I find that the evidence does not establish an unlawful rent increase. Therefore, the return of rent and overpayment of the security deposit claims are denied.

[64] The Tenant Application is denied.

IT IS THEREFORE ORDERED THAT

1. The Landlord will keep the Tenant's security deposit, including interest for cleaning and damage, in the amount of \$1,209.11.

DATED at Charlottetown, Prince Edward Island, this 13th 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.