

INTRODUCTION

- [1] The Landlord seeks to keep the security deposit, including interest, rent owed and additional compensation for damage repair and cleaning.

DISPOSITION

- [2] The Landlord can keep the security deposit, including interest in the total amount of \$1,000.89.
- [3] The Tenants must pay the Landlord \$999.00 for December 2024's rent.

BACKGROUND

- [4] The Unit is an apartment located in an 18-unit building (the "Residential Property").
- [5] On October 1, 2018 the Tenants paid a \$934.00 security deposit. The parties entered into a written, fixed-term tenancy agreement until September 30, 2019. The tenancy then continued on a month-to-month basis. Rent was \$999.00 due on the first day of the month.
- [6] On November 1, 2024 the Tenants gave the Landlord notice that they would be vacating the Unit on November 30, 2024.
- [7] On November 30, 2024 the Tenants vacated the Unit.
- [8] On December 16, 2024 the Landlord's representative (the "Representative") filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking to keep the security deposit, including interest, rent owed and additional compensation for damage repair and cleaning.
- [9] On January 7, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for February 20, 2025.
- [10] On February 13, 2025 the Rental Office emailed the parties a 65-page PDF document and 2-video recordings (the "Evidence Package" or "EP").
- [11] On February 20, 2025 the Representative, a witness for the Landlord ("LW1"), and one of the Tenants (the "Tenant") joined the hearing. The Tenant confirmed she was representing the Tenants. The parties confirmed they received the Evidence Package and confirmed that all evidence submitted to the Rental Office was included.

ISSUE

- A. Has the Landlord established valid claims against the Tenants for rent owed, damage repair and cleaning?

ANALYSIS**Security Deposit**

- [12] Part of the Application sought to retain the security deposit for damage and cleaning.
- [13] 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.*
- ...
- (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.*

[14] The evidence establishes that the parties have agreed in writing that the Landlord can keep the security deposit for repairing damaged floors (EP19-20). The Landlord can keep the security deposit, including interest for damaged floors, in the amount of \$1,000.89.

December 2024's rent

[15] Part of the Application sought a monetary order against the Tenants for December 2024's rent.

Landlord Evidence

- [16] The Representative stated that on November 1, 2024 the Tenants gave her notice that they were vacating the Unit at the end of November 2024. The Representative stated that the Tenants gave insufficient notice. On November 25, 2024 the Tenants informed her that they would move out by December 31, 2024. The Representative stated that the Tenants did not pay December 2024's rent.
- [17] The Representative stated that she advertised the Unit starting November 1, 2024. The Representative stated that she found a new tenant for December 1, 2024, however, the new tenant could not move into the Unit because of the damage to the floor.
- [18] The Representative stated that on December 7, 2024 she realized that the Tenants disconnected the electricity and had abandoned the Unit.

Tenant Evidence

- [19] The Tenant stated that she did not notice that December 2024's rent was not paid. The Tenant stated that she intended to pay December 2024's rent and was not disputing the Landlord's claim.
- [20] The Tenant stated that they vacated the Unit on November 30, 2024 and believed December 2024's rent was paid. The keys were returned to the Representative on December 10, 2024.

The Law & Findings

- [21] 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.*

- [22] The parties' undisputed evidence establishes that the Tenants gave insufficient notice to the Representative and vacated the Unit. I note that providing notice on November 1, 2024 would have ended the tenancy on December 31, 2024.
- [23] Further, I note that the evidence establishes that the Representative took the appropriate steps to mitigate the Landlord's losses as required under section 46 of the Act.
- [24] The Landlord has established a valid claim for December 2024's rent, in the amount of \$999.00.

Additional Compensation

Landlord Evidence

- [25] The Representative stated that there was significant water damage to the floors, cleaning, general repairs and garbage removal that the security deposit does not cover the total cost.
- [26] The Representative stated that the agreement to retain the security deposit for all damage was based on the Tenants paying December 2024's rent.
- [27] LW1 stated that the Unit was very dirty when he arrived and it took approximately twenty hours between two people to clean.

Tenant Evidence

- [28] The Tenant denied the Landlord's claims. The Tenant stated that she believed the Landlord would not seek additional compensation because she agreed the Landlord could keep the security deposit.

The Law & Findings

- [29] I already found that the parties had agreed that the Landlord could keep the security deposit for repairing the floors. The text message correspondence on November 30, 2024 state (EP19-20):

Landlord: "Just to let you know that we will be detaining your damage deposit towards repairing the floor which is more than double your damage deposit. We will not ask for further compensation if you agree with detaining your damage deposit. Please let me know."

Tenant: "Okay [thumbs up emoji]"

Landlord: "Thanks"

Landlord: "Does this mean you're agree that we keep your damage deposit? Yes or no, please confirm."

Tenant: "Yes"

- [30] I find that the evidence establishes that there was no mention of a rent payment being a term or condition of the agreement. The Tenant believed that December 2024's rent was going to be paid. I accept the Tenant's evidence that no further compensation should be awarded due to the parties' agreement. Therefore, the additional compensation claim is denied.

CONCLUSION

- [31] The Application is allowed in part. The Landlord can keep the security deposit, including interest in the amount of \$1,000.89.
- [32] The Tenants must pay the Landlord \$999.00 by April 17, 2025.

[33] The additional compensation claims for repairs, cleaning, garbage removal and an electricity reconnection fee are denied.

IT IS THEREFORE ORDERED THAT

1. The Landlord will keep the security deposit, including interest, in the amount of \$1,000.89.
2. The Tenants must pay the Landlord \$999.00 by April 17, 2025.

DATED at Charlottetown, Prince Edward Island, this 17th 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.