

INTRODUCTION

- [1] The Tenants seek to keep the Subtenant's security deposit and additional compensation for rent owed, damage and garbage removal.

DISPOSITION

- [2] The Tenants can keep the security deposit for rent owed.
- [3] The Tenants' additional compensation claim is denied.

BACKGROUND

- [4] The Unit is a room rental in a 4-bedroom and 1-bathroom apartment with shared common areas in a multi-unit building.
- [5] In August 2024, the Tenants rented the Unit from their own landlord (the "Landlord") and lived in the Unit. The Tenants were given permission by the Landlord to sublet rooms in the Unit.
- [6] On September 2, 2024, the Tenants and the Subtenant entered into an oral, month-to-month subletting agreement for the Unit. The Subtenant paid a \$550.00 security deposit. The rent was \$550.00 due on the first day of the month and did not include furniture, electricity and internet.
- [7] On November 15, 2024, the Subtenant gave the Tenants notice that he was vacating the Unit on December 20, 2024.
- [8] On December 1, 2024, the Subtenant vacated the Unit early.
- [9] On December 20, 2024, the Tenants 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 and additional compensation.
- [10] On February 14, 2025, the Rental Office emailed the parties notice of a teleconference hearing scheduled for March 18, 2025.
- [11] On March 14, 2025, the Rental Office emailed the parties a 33-page PDF document (the "Evidence Package" or "EP").
- [12] On March 18, 2025, the Tenants and the Subtenant joined the teleconference hearing. The parties confirmed they received the Evidence Package and confirmed that all evidence submitted to the Rental Office was included.
- [13] After the hearing, the Tenants submitted two 7-page and 4-page PDF documents (the "Additional Evidence" or "AE"). The Subtenant was provided the Additional Evidence.

ISSUE

- A. Have the Tenants established valid claims against the Subtenant for rent owed, damage and garbage removal?

ANALYSIS**The Security Deposit**

[14] 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.*

December 2024’s rent

[15] The parties’ undisputed evidence establishes that the subletting agreement was an oral, month-to-month agreement. On November 15, 2024, the Subtenant gave the Tenants notice that he was vacating the Unit on December 20, 2024. However, due to the parties’ living arrangement and relationship deteriorating, the Subtenant vacated the Unit on December 1, 2024.

[16] The Subtenant did not dispute that he owed December 2024’s rent. The Subtenant stated that he did not pay December 2024’s rent because he wanted the Tenants to sign an agreement that if he paid December 2024’s rent, then they would return the security deposit.

[17] In these circumstances, I find that the Tenants can keep the full amount of the security deposit for December 2024’s rent, in the amount of \$550.00.

[18] I note that the Tenants provided evidence (AE7of7) that satisfy their duty to mitigate their losses under section 46 of the Act.

[19] I also note that clause 1(h)(iii) of the Act defines a “landlord,” in part, as:

- a person, other than a tenant occupying the rental unit, who*
- (A) *is entitled to possession of the rental unit, and*
 - (B) *exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit.*

[20] In Order LR24-72, the Island Regulatory and Appeals Commission (the “Commission”) commented on the definition of “landlord.” The Commission noted that a tenant who sublets and also occupies a rental unit is not a “landlord” within the meaning of the Act. In this case, the Subtenant and the Tenants both occupied the rental unit.

[21] With regard to the interest on the security deposit, subsection 14(9) of the Act only requires a “landlord” to credit interest on a security deposit to a tenant. As the Tenants are not “landlords,” I find that there is no interest on the security deposit.

Additional Compensation

[22] The Tenants are seeking \$100.00 in additional compensation, exceeding the security deposit amount.

[23] The Tenants stated that the Unit’s wall had scuff and holes which were not there before the Subtenant moved into the Unit. The Tenants provided photographs of the wall after the subtenancy (AE2of7). The Tenants also provided photographs of the Unit prior to the start of the subtenancy (AE1of4).

- [24] The Tenants stated that the Subtenant also left garbage and furniture in the Unit (AE2of4).
- [25] The Tenants stated that a pre-tenancy and post-tenancy inspection report was not completed. However, the photographs submitted into evidence show the condition of the Unit before and after the Subtenant vacated.
- [26] The Tenants stated that the Landlord charged them \$125.00 to remove the garbage and the furniture. The Tenants stated that some of the garbage and furniture that was removed was not the Subtenant's, which is why they are only seeking \$100.00 in additional compensation.
- [27] The Tenants stated that the Subtenant did not pay his share of the electricity and internet for December 2024.
- [28] The Subtenant disputed the Tenants claims. The Subtenant stated that the wall damage is normal wear and tear. The Subtenant stated that he pinned a bulletin board on the wall with some thumbtacks that caused the small holes on the walls.
- [29] The Subtenant stated that he did not leave garbage in the Unit and cleaned the Unit and common areas regularly. The Subtenant stated that when he moved into the Unit there was only a bed in the Unit. The Subtenant stated that he purchased a nightstand, coat rack and some plastic drawers. The Subtenant admitted to leaving them in the Unit, but believed the next occupants would use them.
- [30] The Subtenant stated that he did not live in the Unit for December 2024 and is not responsible for the electricity and the internet.
- [31] Clause 39(2)(a) of 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...*
- [32] Recently, 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."*
- [33] In this case, the Tenants did submit some photographs of the Unit's condition before, during and after the subtenancy. However, the Tenants did not complete a pre-tenancy and post-tenancy inspection reports, which would have assisted in establishing a baseline condition of the Unit.
- [34] After reviewing the parties' evidence, I am not satisfied that the Tenants have established a valid claim for additional compensation. The evidence does not establish damage that is beyond normal wear and tear. Further, the evidence does not establish that the garbage and items photographed are the Subtenant's as numerous people occupied the Unit throughout the subtenancy.
- [35] I note that the parties provided evidence regarding electricity and internet expenses for December 2024. However, the Application does not reference such expenses. The additional compensation claims of \$100.00 appears to encompass primarily the removal of garbage and furniture. The Tenants did not amend the Application to include the electricity and internet expenses.

[36] For these reasons, the additional compensation claim is denied.

[37] The Application is allowed in part. The Tenants will keep the security deposit in the amount of \$550.00 for December 2024's rent.

IT IS THEREFORE ORDERED THAT

1. The Tenants will keep the security deposit in the amount of \$550.00 for December 2024's rent.

DATED at Charlottetown, Prince Edward Island, this 19th 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.