

**INTRODUCTION**

- [1] The Landlord's representative (the "Representative") filed to keep the security deposit, including interest and additional compensation exceeding the security deposit for reimbursement of pest control costs, cleaning, repairs, painting, court fees and rent owing, in the total amount of \$9,000.00.

**DISPOSITION**

- [2] I find that the Landlord had filed the Application within the 15-day statutory limit. Therefore, the Landlord has complied with section 40(1) of the *Residential Tenancy Act* (or the "Act").
- [3] I find that the Landlord will keep \$1,135.75 from the security deposit and return to the Tenant \$27.04.

**BACKGROUND**

- [4] The Unit is an apartment in a 12-unit building (the "Residential Property").
- [5] On November 1, 2020, the parties entered into a written one-year fixed-term tenancy agreement for the Unit. The tenancy then continued on a month-to-month basis. Rent was \$1,160.00 due on the first day of the month. A \$1,100.00 security deposit was paid at the beginning of the tenancy.
- [6] On February 9, 2024, Order LD24-043 ordered that the tenancy be terminated effective February 29, 2024 under clause 61(1)(d) of the *Residential Tenancy Act* because the Tenant failed to properly prepare the Unit for pest control spraying.
- [7] On February 15, 2024, the Tenant appealed Order LD24-043 to the Island Regulatory and Appeals Commission (the "Commission").
- [8] On April 24, 2024, the Commission issued Order LR24-19, which dismissed the appeal and terminated the tenancy effective February 29, 2024 and ordered the Tenant to immediately vacate the Unit.
- [9] On May 6, 2024, the Tenant filed a Notice of Appeal with the Court of Appeal, and requested a stay of proceedings pending appeal.
- [10] On June 11, 2024, the Court of Appeal dismissed the Tenant's application.
- [11] On June 19, 2024, Sheriff Services enforced Order LR24-19 and delivered vacant possession of the Unit to the Landlord.
- [12] On July 2, 2024, 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 and additional compensation exceeding the security deposit amount.
- [13] On August 1, 2024, the Representative amended the Application to include more detailed costs associated with the claims. The Representative requested additional time to gather evidence before a hearing date was scheduled.
- [14] On November 8, 2024, the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for December 10, 2024.
- [15] On November 25, 2024, the Rental Office emailed the parties an updated notice of a paper based hearing.

- [16] On December 2, 2024, the Rental Office emailed the parties a 62-page PDF document (the "Evidence Package" or "EP"), which included Director's Evidence.
- [17] On December 13, 2024, the Rental Office emailed the parties another updated notice of a paper based hearing with an extension to submit written submissions by January 15, 2025.
- [18] On January 22, 2025, the Rental Office emailed the parties a 15-page PDF document (the "Response Package" or "RP"), which included additional supplementary Director's Evidence.
- [19] I have reviewed the evidence submitted and prepared this Order.

## ISSUES

- A. Has the Landlord complied with subsection 40(1) of the Act?
- B. Has the Landlord established valid claims for reimbursement of pest control costs, cleaning, repairs, painting, court fees and rent owed?

## ANALYSIS

### A. Has the Landlord complied with subsection 40(1) of the Act?

- [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] On February 9, 2024, the Rental Office ordered the tenancy agreement be terminated effective February 29, 2024. However, the Tenant appealed that order to the Commission, which automatically stayed the order under subsection 89(6) of the Act.
- [22] The evidence establishes that on April 24, 2024, the Commission issued Order LR24-19, which terminated the tenancy agreement effective February 29, 2024 and ordered the Tenant to vacate the Unit immediately. The Tenant appealed to the Court of Appeal and requested a stay of the proceedings. The stay was denied on June 11, 2024 and the Tenant vacated the Unit on June 19, 2024. On July 2, 2024, the Application was filed with the Rental Office.

[23] Section 40 requires a landlord to file an application to keep the security deposit within 15-days from the end of the tenancy. In these circumstances, I must determine when the tenancy ended.

[24] The Island Regulatory and Appeals Commission (or the "Commission") in Order LR24-41, paragraphs 21 and 22 commented on when a landlord's 15-day time limited started running, whenever a tenancy agreement is terminated and a tenant appeals the termination:

*"In our opinion, for the reasons that follow, the Landlord had until February 28, 2024 – being 15 days from the date of the Commission Order LR24-04, issued February 13, 2024 – to comply with subsection 40(1) of the Act. This is because the appeal of a Rental Office Order LD24-126 acted as an automatic stay of that order, in accordance with subsection 89(6) of the Act. A stay "abridges for a defined period the effect of a previous court order."*

*"Therefore, despite the finding that the tenancy actually ended on December 28, 2023, as found in the Rental Office Order, the appeal process postponed the effect of Order LD24-126. As a result, the Landlord was only truly in a position to act on his obligations respecting the end of the tenancy. In our opinion, any other conclusion would make it impossible for the Landlord to comply with the security deposit provisions of the Residential Tenancy Act because he would have been required to fulfil those obligations by a date that had long since passed."*

[25] In this case, the Tenant filed a Notice of Appeal and requested a stay of proceedings. I note that there is no statutory authority contained in the *Residential Tenancy Act* that provides for an automatic stay of proceedings from a Commission order appealed to the Court of Appeal (see *Pitre & Richards v. Shea & Jinks, Island Regulatory and Appeals Commission* 2024 PECA 7). Unlike an appeal of a Rental Office order to the Commission, there was no automatic stay to Order LR24-19.

[26] On June 11, 2024, the Court of Appeal denied the Tenant's application for stay of proceedings. I note that during the eviction dispute process (the Rental Office, the Commission and the Court of Appeal hearings) the Tenant continued to live in the Unit.

[27] Once the matter was concluded by the Court of Appeal, the Representative requested Sheriff Services to enforce Order LR24-19, which Sheriff Services did on June 19, 2024.

[28] In light of the Commission's comments in Order LR24-41, I must consider the Landlord's position to be able to truly act on their obligations respecting the end of the tenancy.

[29] I also note that section 38 of the Act, outlines a landlord's obligation at the end of the tenancy to complete a post-tenancy inspection. This is primarily to observe the condition of the rental unit at the end of the tenancy.

[30] Considering both the Commission's comments in Order LR24-41 and section 38's purpose, I find that it is appropriate in these circumstances to start the 15-day time limit on June 19, 2024. This was the date the Landlord received vacant possession of the Unit. The finality of this event provided the Landlord with the fairest opportunity to meet their end of tenancy obligations.

[31] I find that the Landlord had filed the Application within the 15-day statutory limit. Therefore, the Landlord has complied with section 40(1) of the Act.

**B. Has the Landlord established valid claims for reimbursement of pest control costs, cleaning, repairs, painting, court fees and rent owed?**

[32] The Landlord seeks to keep the security deposit, including interest and additional compensation exceeding the security deposit for reimbursement of pest control costs, cleaning, repairs, painting, court fees and rent owing, in the amount of \$9,000.00.

- [33] The Landlord submitted a *Form 5 Landlord Condition Inspection Report* (the "Report") dated June 19, 2024 into evidence. The Report was signed by the Representative and it appears the Tenant was not present for the inspection.
- [34] I note that the Application seeks a total amount of \$9,000.00; however, the claims mentioned on the Application only add up to \$7,649.47, calculated as followed:

<u>Claim</u>	<u>Amount</u>
1. Pest control (Rentokil) inspection & remediation:	\$2,472.50;
2. Cleaning (carpet, appliances & garbage removal):	\$785.75;
3. Lock replacement:	\$126.50;
4. Window & patio door repair:	\$311.30;
5. Curtain/Blind replaced:	\$158.65;
6. Painting entire rental unit:	\$1,976.77;
7. Sheriff & Court filing fees:	\$225.00;
8. <u>Rent for 40 days:</u>	<u>\$1,593.00;</u>
Total:	\$7,649.47

### **Pest Control (Rentokil)**

- [35] The Landlord seeks \$2,472.50 in compensation for inspections and remediation for cockroaches. The Landlord submitted invoices for Rentokil (EP24-28) into evidence. The general comments for the invoice dated November 24, 2023 (EP24) stated:

*"Inspected 9 units at [the Residential Property] for german cockroaches. My findings were apartment #1, 2, 3, 4, 7, and 9, was clean with no evidence. #8 and 11 the tenant said they saw a few. #6, 10 and 12 have had 1 treatment and will have 2 more. Having a difficult time with the [Tenant] in [the Unit] with a large amount of clutter including a room that I can't access because you can only open the door 6 inches as there is clutter all the way to the ceiling and the living room has a lot of clutter. Cost of this inspection is \$450.00 plus tax = \$517.50. To be invoiced."*

- [36] The invoice dated March 14, 2024 (EP26), totals \$575.00 and is for treatment for two other rental units in the Residential Property.
- [37] The invoice dated April 4, 2024 (EP27), totals \$230.00 and is for rat control treatment for the Residential Property.
- [38] The invoice dated June 21, 2024 (EP29), totals \$287.50 and is for cockroach treatment for the Unit.
- [39] In Order LD24-043 (EP52-56) the Rental Officer stated:

*"After reviewing the documentary evidence and the submissions of the parties, specifically the documentary evidence of the Landlord and the video evidence of the Tenant, the Officer finds that the Landlord has established that the Tenant has breached subsection 61.(1)(d) of the Act. **The Officer finds that by failing to properly prepare the rental unit for pest control spraying, the Tenant has...**" [emphasis added]*

- [40] In Order LR24-19 (EP57-62) the Commission stated:

*"Based on the evidence before the Commission, the Commission finds that the Tenant did not comply with treatment instructions."  
The Commission agrees with the Rental Office that the Tenant has breached clause 61.(1)(d) and this breach justifies termination of the tenancy."*

- [41] I note that both the Rental Officer and the Commission found that the evidence established that the Tenant failed to properly prepare the Unit, which impeded the professionals from remediating the Unit. I also note that neither the Rental Office nor the Commission makes a finding that the Tenant caused the cockroach infestation.
- [42] The Tenant provided written submissions (RP3-5), which stated that the cockroach problem in the Residential Property was never focused on the Unit alone.
- [43] I have reviewed the evidence and I find that the evidence establishes a valid claim in the amount of \$345.00.
- [44] I find that the evidence does not establish that the Tenant caused the cockroach infestation. The Landlord is seeking \$2,472.50 in compensation for the cost of the inspections and the remediation. However, the evidence does not support this total amount of compensation sought. Some of the invoices submitted into evidence are for other rental units in the Residential Property or are associated to a rat infestation, which has similarly not been proven to be the Tenant's fault.
- [45] I find that the evidence supports a valid claim in the amount of \$345.00, calculated as follows:

Invoice for November 24, 2023 (EP24):	\$517.50 divided by 9 units = \$57.50;
Invoice for June 24, 2024 (EP29):	<u>\$287.50;</u>
Total:	\$345.00

### **Cleaning, Painting & Damage**

- [46] The Landlord seeks compensation for cleaning, painting and damage which included a lock replacement, window and patio repair and curtains being replaced.
- [47] The Landlord submitted invoices and receipts into evidence to support the compensation sought. The Landlord also submitted the Report which lists these items.
- [48] The Tenant provided written submissions (RP3-5), which stated that the [Tenant] "is willing to pay for some cleaning." The Tenant disputed the carpet cleaning as it was in poor condition when he moved into the Unit. However, later in the submissions, the Tenant stated that "further cleaning of the Unit would have been necessary following his still-under-dispute eviction. Under normal circumstances the Tenant would be willing to have the cleaning cost (\$785.75) deducted from the security deposit. However, given the nature of the Landlord's evidence, the Tenant requests the return of the full security deposit and double the security deposit."
- [49] The Tenant disputed the painting and damage costs as normal wear and tear. Having lived in the Unit for six years, it would be expected that the Unit would require a fresh coat of paint.
- [50] I have reviewed the evidence and I find that the evidence establishes a valid claim in the amount of \$565.75.
- [51] Clause 39(2) 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...*

- [52] 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."*

- [53] In this case, the Landlord did not submit any pre-tenancy or post-tenancy photographs of the Unit. Further, a pre-tenancy inspection report would have been helpful in assisting in establishing a baseline condition of the Unit. However, I note that in these circumstances, a pre-tenancy and the Report was not obligatory under section 109 of the Act.
- [54] The onus to establish such expenses rests on the party seeking the claim. The claim must be supported by objective and compelling evidence with respects to the cause and the cost of the claim.
- [55] The Landlord has established a valid claim for cleaning in part. I find that the Landlord is entitled to \$565.75 for cleaning and garbage removal costs.
- [56] Despite the Landlord not submitting documentary evidence to establish a baseline condition of the Unit, I find that the Tenant's evidence suggests that the Unit needed cleaning at the end of the tenancy. I find that the undisputed evidence establishes a claim for cleaning in the amount of \$564.75 (deducting the carpet cleaning and window screen replacement). I deduct these items as the Tenant has disputed these items and the Landlord has failed to prove its claims.
- [57] After reviewing the evidence, I am not satisfied that the Landlord has established its claim for painting and damage.
- [58] This claim is allowed in part, in the amount of \$564.75.

#### **Sheriff & Court Filing Fees**

- [59] The Landlord seeks compensation for Sherriff Services and filing fees from the Supreme Court of Prince Edward Island. The Landlord submitted three invoices into evidence (EP8-10) for a total amount of \$225.00.
- [60] The Tenant provided written submissions (RP3-5), which stated that "police and court charges are all related to the eviction. Notwithstanding the debated circumstances leading to the eviction, these costs must be considered part of the cost of doing business as a landlord, not chargeable to the tenant."
- [61] I have reviewed the evidence and I find that the Landlord has established a valid claim in the amount of \$225.00. I find that the Landlord has incurred costs as it relates to enforcing a lawful eviction notice. This claim is allowed.

#### **Rent**

- [62] The Landlord is seeking compensation for 40-days of lost rent. The Application states: "40 day rent loss: \$1,593.00, the apartment stay vacant during the treatment."
- [63] The Tenant disputed this claim in his written submissions.
- [64] Similarly, to my reasons above, I find that the evidence does not establish that the Tenant caused the cockroach infestation. Further, the tenancy ended on June 19, 2024 and the Tenant was not overholding after this date. I find that the Tenant is not responsible for any further rent after June 19, 2024. The claim is denied.

**CONCLUSION**

[65] The Application is allowed in part. The Landlord can keep a portion of the security deposit, in the amount of \$1,135.75, calculated as followed:

Item	Amount
Pest Control	\$345.00
Cleaning & Garbage Removal	\$565.75
Sheriff Services & Court Fees	\$225.00
Total Compensation:	\$1,135.75
Less Security Deposit & Interest	(\$1,162.79)
Total returned to the Tenant	\$27.04

[66] The Landlord must pay the Tenant \$27.04 by the timeline below.

**IT IS THEREFORE ORDERED THAT**

1. The Landlord will keep a portion of the security deposit, in the amount of \$1,135.75.
2. The Landlord will pay the Tenant \$27.04 by April 24, 2025.

**DATED** at Charlottetown, Prince Edward Island, this 24th 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.