

**INTRODUCTION**

- [1] The Tenant seeks compensation for unlawful rent increases. The Tenant also seeks compensation for failure to repair the Unit in the amount of \$1,500.00.
- [2] The Landlord seeks rent owing in the amount of \$2,000.00. The Landlord also seeks additional compensation for damage and furnace oil, in the amount of \$8,846.98.

**DISPOSITION**

- [3] The Tenant established a total claim of \$8,700.00. The Landlord established a total claim of \$1,064.62. The net amount owed to the Tenant is \$7,635.48.
- [4] The lawful rent for the Unit is \$1,100.00 per month. This amount is fixed and can only be increased by following the process set out in the *Residential Tenancy Act* (or the "Act").

**BACKGROUND**

- [5] The Unit is a two-bedroom and one-bathroom, single-family dwelling.
- [6] On July 1, 2021, the parties entered into an oral, month-to-month tenancy agreement. Rent was \$1,100.00 due on the first day of the month. A security deposit was required but not paid.
- [7] On December 10, 2024, the Landlord served a *Form 4(A) Eviction Notice* (the "Notice") to the Tenant for non-payment of rent and repeatedly late rent payments.
- [8] On December 30, 2024, the Tenant vacated the Unit due to the Notice.
- [9] On January 6, 2025, the Tenant filed an amended *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Residential Tenancy Office (the "Rental Office") seeking compensation for unlawful rent increases and failure to repair the Unit during the tenancy.
- [10] On January 15, 2025, the Landlord filed an amended *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Rental Office seeking rent owed and additional compensation for damage and furnace oil. The Tenant Application and the Landlord Application are collectively referred to as the "Applications."
- [11] On January 24, 2025, the Rental Office emailed the parties notice of a teleconference hearing scheduled for February 25, 2025, along with a copy of the Applications.
- [12] On February 13, 2025, the Rental Office made available to the parties a 146-page PDF and 1-video recording (the "Evidence Package") through TitanFile.
- [13] On February 25, 2025, the Tenant, the Landlord and the Landlord's witness ("LW1") joined the teleconference hearing. The parties confirmed they received the Evidence Package. The Tenant stated that one page was missing from her evidence, which was sent to the Rental Office and forwarded to the Landlord after the hearing.
- [14] The Landlord submitted 5-pages of additional evidence after the hearing, which was forwarded to the Tenant.

**ISSUES**

- A. Must the Landlord return rent due to unlawful rent increases and compensate the Tenant for failure to repair the Unit?
- B. Must the Tenant compensate the Landlord for rent owing and additional compensation for damage and furnace oil?

**ANALYSIS & FINDINGS**

- A. Must the Landlord return rent due to unlawful rent increases and compensate the Tenant for failure to repair the Unit?**

**The Tenancy**

- [15] The parties had a friendly, pre-existing relationship prior to the tenancy agreement. The Tenant moved into the Unit in July 2021, under an oral tenancy agreement. Included in the Evidence Package was an unsigned, written tenancy agreement dated June 26, 2021.
- [16] The Tenant stated that she never signed an agreement and never received the written tenancy agreement. The Landlord stated that she may have drafted the tenancy agreement at the beginning of the tenancy, but never sent it to the Tenant.
- [17] The written agreement states the services, terms and condition. The rent was \$1,100.00 due on the first day of the month and a \$1,100.00 security deposit was required.
- [18] I find that the evidence establishes that the parties did not sign or agree to the terms and conditions detailed in the written agreement. The tenancy was established by an oral month-to-month agreement, which started on July 1, 2021.

**Unlawful Rent Increases**

- [19] The unlawful rent increase claims spans from July 2022 to December 2024.
- [20] The *Residential Tenancy Act* came into force on April 8, 2023. Prior to this the *Rental of Residential Property Act* (or the "Former Act") was the law for residential landlords and tenants on Prince Edward Island.
- [21] In this case, from July 2022 to April 7, 2023, the Former Act applied. From April 8, 2023 to December 30, 2024, the Act applied.
- [22] Clauses 21 and 23(1) of the Former Act state:

*The rent payable for residential premises shall not be increased until twelve months have elapsed since the date of any previous increase or, in the case of residential premises not previously rented, the date on which rent was first charged.*

*Except as provided in subsection (3) and notwithstanding the terms of any rental agreement, the amount of any rent increase between January 1 and December 31 of any year shall not exceed the percentage amount which is established by an order of the Commission and published in the Gazette.*

- [23] Prince Edward Island is a rent controlled jurisdiction and this has not changed in the past thirty-five years. The Island Regulatory and Appeals Commission (the "Commission") in Order LR19-15 summarized this province's rent control rules under the Former Act as follows:

*“In Prince Edward Island, the Rental of Residential Property Act ... provides for a system of rent control whereby rent runs with the residential unit. When a lessee surrenders possession of that unit to the lessor, that rate of rent still remains fixed to that unit. This rent applies to a subsequent lessee even if the unit has been vacant between the tenancies. **Any agreement as to the amount of rent reached between lessor and lessee is null and void to the extent that it runs contrary to the rent control provisions of the Act.***

*To balance out the rigours of rent control, Part IV of the Act sets out the process whereby rent increases may lawfully be made. If a lessor raises the rent of a unit without first following the process set out in Part IV of the Act, such an increase is illegal.*

*As there is no evidence that this rental increase was approved under Part IV of the Act, the Commission finds that the Appellant illegally increased the rent of 39 Rankin Court from \$800.00 per month to \$1500.00.*

*Both the Appellant and Mr. Wang pleaded lack of knowledge as to the quantum of the previous rent and lack of familiarity as to the requirements of the Act. Mr. Wang's testimony appeared to deflect blame to others. **Lack of familiarity of the Act does not in any way mitigate the requirements of the Act.*** [Emphasis added.]

- [24] Further, Commission Order LR22-18 commented on rent control and landlords reducing the rent. The Commission stated:

*“The Commission accepts that the rent for the Premises was initially \$1,400 per month, but that rate was then reduced. While the Appellants may have requested rent higher than \$1,200.00 per month from the tenants immediately prior to the Respondents, the Appellants deposited the post-dated cheques as they came due and thus are deemed to have accepted rent at \$1,200 per month. **Unfortunately for the Appellants, such acceptance established the rent for the Premises at \$1,200.00 per month and no application was made to the Director to lawfully increase the rent prior to the Respondents leasing the Premises.***” [Emphasis added.]

- [25] Subsections 47(1), (2) and 49(1) of the *Residential Tenancy Act* state:

*A landlord shall not increase rent except in accordance with this Part.  
The obligations of a landlord under this Part run with the rental unit and not the tenant.*

*No landlord shall increase the rent charged for a rental unit by more than the allowable annual increase, except in accordance with section 50.*

- [26] I find that rent control has not changed from the Former Act to the Act. Further, I note that the time for filing the Tenant Application had not expired under the Former Act or the Act.

- [27] The parties' evidence establishes the following rent timeline:

Dates	Rent
July 2021 to June 2022:	\$1,100.00
July 2022 to June 2023:	\$1,300.00
July 2023 to September 2024:	\$1,400.00
October 2024 to December 2024:	\$2,000.00

- [28] The Tenant stated that the Landlord unlawfully increased the rent without notice and approval from the Rental Office. The Tenant stated that she thought the Landlord could increase the rent because there was no written tenancy agreement.

- [29] The Landlord stated that the parties agreed orally at the start of the tenancy that the rent was \$2,000.00. The Landlord stated that the Tenant was unable to pay \$2,000.00 a month, so the parties agreed to start the rent at \$1,100.00, and gradually increase the rent.
- [30] The Landlord stated that the unsigned, written tenancy agreement submitted into evidence does not mention the \$2,000.00 rent or the oral agreement because this was her first time renting the Unit, and there was a pre-existing friendship with the Tenant.
- [31] I have reviewed the parties' evidence and I find that there was an unlawful rent increase beginning on July 1, 2022, and continuing until the end of the tenancy.
- [32] The Former Act and the Act limit the amount a landlord can annually increase the rent. This is referred to as "rent control." As mentioned above, the restriction has not changed in the past thirty-five years, which includes the transition from the Former Act to the Act.
- [33] In this case, I find that the evidence establishes that at the start of the tenancy, the rent charged was \$1,100.00. There is no objective and direct evidence to establish that the rent was \$2,000.00 at the start of the tenancy, and that the \$2,000.00 rent was charged to the Tenant.
- [34] In July 2022, the rent increased to \$1,300.00, this was an 18% increase. The maximum allowable was 1.0%.<sup>1</sup> This rent increase was not compliant with subsection 23(1) of the Former Act.
- [35] In July 2023, the rent increased to \$1,400.00, this was a 7.7% increase. The allowable annual guideline was 0.0% under subsection 49(4) of the Act. This rent increase was not compliant with subsection 47(1) of the Act.
- [36] In October 2024, the rent increased to \$2,000.00, this was a 42.8% increase. The allowable annual guideline was 3.0%, set by the Director under subsection 49(2) of the Act. This rent increase was not compliant with subsection 47(1) of the Act.
- [37] I find that the Landlord did not provide notice or increase the rent by the allowable annual guideline. The Landlord also did not file an application with the Rental Office seeking approval of an additional rent increase under the Former Act or the Act.
- [38] Further, I note that the Landlord testified that there was an oral agreement that the rent would be \$2,000.00, but discounted for a period of time. As mentioned above, the Commission in Order LR22-18 commented on landlords reducing the rent under the Former Act.
- [39] I find that the Commission's comments also apply in the same circumstances under the Act. Additionally, such an agreement would be void under section 5 of the Act, which states:
- Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.*
- [40] Therefore, I find that the Landlord unlawfully increased the rent. This claim in the Tenant Application is allowed.
- [41] The Tenant Application stated a \$4,800.00 return of rent due to the unlawful rent increases. However, the evidence established that the unlawful rent increases started July 1, 2022, when the rent increased from \$1,100.00 to \$1,300.00. This was an 18% rent increase, when the maximum allowable was 1.0%. The lawful rent for the Unit was \$1,100.00, and the subsequent three rent increases were not compliant with the Former Act and the Act.

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<sup>1</sup> <https://peirentaloffice.ca/allowable-rent-increases/>

[42] I find that the total amount for the unlawful rent claim is \$8,700.00, calculated as follows:

Timeline	Rent	Unlawful Increase	Total
July 2021 to June 2022:	\$1,100.00	N/A	\$0.00
July 2022 to June 2023:	\$1,300.00	\$200.00 x 12 months	\$2,400.00
July 2023 to September 2024:	\$1,400.00	\$300.00 x 15 months	\$4,500.00
October 2024 to November 2024:	\$2,000.00	\$900.00 x 2 months	\$1,800.00
Total Amount:			\$8,700.00

### Compensation for Failure to Repair

- [43] The Tenant seeks compensation because the Landlord failed to repair the Unit, in the amount of \$1,500.00.
- [44] The Tenant stated that the heat pump was the main source of heat for the Unit. The Tenant stated that beginning in June or July 2024, the heat pump stopped working properly. The Tenant stated that she informed the Landlord of her concerns regarding the heat pump. The Tenant stated that the Landlord had someone inspect the heat pump.
- [45] The Tenant stated that the heat pump issues continued. The Tenant stated that she turned the heat pump off and did not use it for the remainder of the tenancy. The Tenant relied on the in-floor heating to heat the Unit.
- [46] The Landlord stated that she immediately contacted a professional contractor to have the heat pump inspected. The Landlord stated that it took some time for the professional to become available. The professional could not find any issues with the heat pump.
- [47] LW1 stated that he also inspected the heat pump. Both the Landlord and LW1 disputed that the heat pump was the main source of heat for the Unit.
- [48] I have reviewed the parties' evidence. I find that the evidence does not establish a claim for compensation for failure to repair.
- [49] A landlord has a duty to repair and maintain a rental unit under clause 28(1) of the Act.
- [50] In this case, I find that the evidence establishes that the Landlord took appropriate steps to repair the heat pump. Further, I note that clause 8 of the *Public Health Act Rental Accommodation Regulations* provides the heating and temperature requirements for a rental unit. I find that the evidence does not establish that the Landlord failed to maintain these requirements. Therefore, this claim is denied.
- [51] I note that the Tenant testified that she was afraid of the Landlord and LW1. The Tenant stated that the Landlord and LW1 threatened her with eviction and that the Tenant saw foot marks around the Unit.
- [52] The Landlord stated that there were no threats made against the Tenant. The Landlord noticed that issues started to arise in the Summer of 2024. The Landlord testified that she saw a Facebook advertisement for a room in the Unit. The Landlord wanted the ad removed and gave the Tenant options, which included: sign a new written tenancy agreement, or the Tenant can vacate the Unit. The Landlord stated that she did not serve the Tenant an eviction notice related to this conversation. The Landlord served the Notice for non-payment of rent and late rent payments.
- [53] I find that the choices given to the Tenant by the Landlord were not consistent with the Act. A tenant is not required to enter into a new tenancy agreement unless both the parties agree. Further, a tenancy can only be terminated in accordance with the Act under subsection 51(1).

- [54] Despite this finding, I find that compensation is not warranted. The evidence does not establish the Tenant suffered financial loss and I do not have the jurisdiction to award compensation for pain and suffering. I further note that the tenancy ended due to non-payment of rent and late payments of rent and not for an unlawful other reason.

**B. Must the Tenant compensate the Landlord for rent owing and additional compensation for damage and furnace oil?**

- [55] The Landlord is seeking \$2,000.00 for December 2024's rent and \$8,846.98 in additional compensation for damage and furnace oil.

**December 2024's Rent**

- [56] The Landlord stated that the Tenant did not pay December 2024's rent and the Notice was served to the Tenant. The Tenant vacated the Unit on December 30, 2024 without paying December's rent.
- [57] I find that the undisputed evidence establishes that the Tenant owes rent for December 2024. This claim is allowed. However, the lawful rent is \$1,100.00. The Tenant vacated the Unit on December 30, 2024. Therefore, the Landlord is awarded pro-rated rent in the amount of \$1,064.52 (30 days divide 31 days multiply by \$1,100.00). This will be offset against the Tenant's compensation.

**Damage & Furnace Oil**

- [58] The Landlord seeks additional compensation for damage and furnace oil, in the amount of \$8,846.98.
- [59] LW1 stated that he inspected the Unit between December 11 and 14, 2024. The Tenant did not participate in the inspection and instead left the Unit until the inspection was done. The photographs from the inspection were submitted into evidence.
- [60] The Landlord stated that she lived in the Unit prior to the tenancy for approximately eleven years. The Unit was last painted in 2019 and was in an overall good condition prior to the tenancy.
- [61] The Landlord stated that a lot of damage was left in the Unit. The Landlord claims as follows:
1. Painting, patching and seam fill the walls;
  2. Damage to outdoor corner boards;
  3. Landscaping;
  4. Repair to custom blinds;
  5. Damage to front door sidelight;
  6. Patio door damaged;
  7. Baseboard damage;
  8. Broken light fixture;
  9. Broken microwave;
  10. Replaced door knob; and
  11. Refilling half of the furnace oil.
- [62] The Tenant denied the Landlord's claims. The Tenant described the damage as reasonable wear and tear after many years of living on the Unit. The Tenant stated that the Landlord's quotes are inflated. The Tenant stated that the damage to the microwave was there when she moved into the Unit. The Tenant stated that the Unit was cleaned before she vacated the Unit, and that the inspection was done two weeks before she vacated. The Tenant stated that the fence installation was the Landlord's idea and that she was given permission to install it.
- [63] The Tenant stated that the furnace oil was filled in November 2024.

- [64] I have reviewed the evidence, and my findings are as follows. 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...*

- [65] Commission Order LR25-02 addresses the importance of photographs at the beginning of a tenancy to establish the baseline condition of a rental unit, stating as follows:

*"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."*

- [66] I note that in these circumstances, a pre-tenancy and a post-tenancy inspection report was not obligatory under section 109 of the Act. In this case, the Landlord did not provide any pre-tenancy photographs of the Unit. However, a pre-tenancy inspection report would have been helpful in establishing a baseline condition of the Unit.

- [67] The onus to establish such expenses rests on the party making the claims. The claims must be supported by objective and compelling evidence with respect to the cause and the amount of the claim.

- [68] I find that the evidence does not support the Landlord's claim for damage. Particularly, I find that the parties provided disputed evidence regarding the cause of the damage. The evidence submitted by the Landlord is not enough to establish that the damaged alleged is beyond reasonable wear and tear and that the damaged was actually caused by the Tenant.

- [69] The Landlord claims \$705.41 for furnace oil.

- [70] The Landlord stated that it was the Tenant's responsibility under the tenancy to fill the oil tank prior to vacating. The Landlord submitted a copy of the \$705.41 invoice for filling the furnace after the Tenant vacated.

- [71] I find that the Landlord's evidence does not establish that the oil tank was filled at the start of the tenancy. Therefore, the Landlord has not established this claim.

- [72] The Landlord Application is allowed in part.

## CONCLUSION

- [73] The Tenant Application is allowed in part. The Tenant's total established claim is \$8,700.00.

- [74] The Landlord Application is allowed in part. The Landlord's total established claim is \$1,064.52.

- [75] The Landlord owes the Tenant the net amount of \$7,635.48.

- [76] The lawful rent for the Unit is \$1,100.00 per month. This amount is fixed and can only be increased by following the process set out in the Act.

**IT IS THEREFORE ORDERED THAT**

1. The Landlord must pay the Tenant \$7,635.48 by June 9, 2025.
2. The lawful rent for the Unit is \$1,100.00 per month. This amount is fixed and can only be increased by following the process set out in the Act.

**DATED** at Charlottetown, Prince Edward Island, this 8th day of April, 2025.

(sgd.) Cody Burke

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**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.