

INTRODUCTION

- [1] This decision determines an application filed under the *Residential Tenancy Act* (“Act”) with the Residential Tenancy Office (“Rental Office”).
- [2] The Landlord seeks to keep the Tenants’ security deposit, including interest, in the amount of \$2,000.00 and additional compensation for rent owing, refilling the oil tank, cleaning and damage, in the amount of \$11,847.02. The Landlord’s total claim is \$13,847.02.
- [3] The Landlord also sought an order to permit the disposal of the Tenants’ personal property.

DISPOSITION

- [4] The evidence establishes that the Landlord has a valid claim for rent owing, refilling the oil tank, cleaning and damage. The Landlord can keep the Tenants’ security deposit, including interest, in the amount of \$2,066.37 to offset the Landlord’s claims. The Tenants must pay the Landlord \$10,319.65 by the timeline below.
- [5] The parties agreed that the Tenants would collect their personal property on Monday, April 21, 2025. The Landlord can dispose of the Tenants’ remaining personal property by the timeline below.

BACKGROUND

- [6] The Unit is a two-bedroom and three-bathroom single family dwelling, owned by the Landlord.
- [7] On November 13, 2023, the parties signed a written, fixed-term tenancy agreement on the *Form 1 – Standard Form of Tenancy Agreement* for the period of November 18, 2023 to December 31, 2024. Rent was \$2,000.00 due on the first day of the month. Oil heating, electricity and propane were not included services and facilities under the tenancy agreement.
- [8] On November 28, 2023, the Tenants paid a \$2,000.00 security deposit to the Landlord.
- [9] The Tenants vacated the Unit in October 2024, without notice to the Landlord.
- [10] On January 7, 2025 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the “Application”) with the Rental Office seeking to keep the security deposit, including interest for rent owing and damage. The Application also sought an order to permit the disposal of the Tenants’ personal property.
- [11] On February 12, 2025 the Landlord provided the Rental Office with an inventory list of the Tenants’ personal property.
- [12] On March 7, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing for determination of the Application.
- [13] On April 4, 2025 the Rental Office emailed the parties a 43-page evidence package.
- [14] On April 17, 2025 the Landlord and the Tenants joined the teleconference hearing for determination of the Application. The parties confirmed that they received the evidence package and the Landlord confirmed that all documents submitted to the Rental Office were included. The Tenants confirmed that they did not submit any documents into evidence.
- [15] During the hearing the parties agreed that the Tenants would collect their personal property on the inventory list on Monday, April 21, 2025.

ISSUE

- A. Has the Landlord established claims against the Tenants for rent owing, refilling the oil tank, cleaning and damage?

ANALYSIS & FINDINGS**1. Rent Owing**

- [16] The parties' evidence establishes that the Tenants owe rent to the Landlord. The Tenants were not always able to pay the rent on time but were able to meet the rent payments until August 2024. The last rent payment was \$500.00 in August 2024. The Landlord stated that he tried to work with the Tenants, offering payment plans rather than serving an eviction notice for non-payment of rent. The Tenants were unable to meet the payment plans.
- [17] The tenancy agreement was for a fixed-term, which ended on December 31, 2024. The parties communicated in October 2024, regarding possibly vacating the Unit. The Landlord stated that the Tenants stopped responding to his messages. The Landlord posted a 24-hour notice of entry and entered the Unit on October 29, 2024. The Landlord stated that the Tenants abandoned the Unit. The Tenants never returned the Unit's keys and the Landlord took possession of the Unit on October 29, 2024.
- [18] The Landlord stated that the Unit was unable to be re-rented because of its condition. The Unit was not completely cleaned until November 14, 2024 and there are still unrepaired damages in the Unit. The Landlord stated that with the warmer weather he intends to have the repairs completed.
- [19] The Tenants agreed owing the Landlord rent for the duration of the tenancy. The rental arrears are as follows:

| <u>Month</u> | <u>Amount Paid</u> | <u>Amount Outstanding</u> |
|----------------|--------------------|---------------------------|
| August 2024 | \$500.00 | \$1,500.00 |
| September 2024 | \$0.00 | \$2,000.00 |
| October 2024 | \$0.00 | \$2,000.00 |
| November 2024 | \$0.00 | \$2,000.00 |
| December 2024 | \$0.00 | <u>\$2,000.00</u> |
| | Total | \$9,500.00 |

- [20] I find that the evidence establishes that the Tenants owe the Landlord rent in the total amount of \$9,500.00
- [21] I find that the Tenants abandoned the Unit (see subsection 42(2) of the *Act*) and the Landlord took possession of the Unit on October 29, 2024. The Tenants had outstanding rental arrears from August to October 2024.
- [22] I find that the evidence establishes that the Tenants did not give the Landlord sufficient notice to end a fixed-term tenancy agreement required under subsection 55(3) of the *Act*. Further, I find that the evidence establishes that the Landlord was unable to re-rent the Unit due to the Unit's condition (reasons below).
- [23] I accept the Landlord's evidence that he sufficiently mitigated his losses under section 46 of the *Act*. The Landlord has established a valid claim for rent owing until the end of the fixed-term, which includes unpaid rent for November and December 2024.
- [24] This claim is allowed, in the amount of \$9,500.00.

2. Fill-up Oil Tank

- [25] The parties' evidence establishes that the oil tank was full at the beginning of the tenancy and that it was the Tenants' responsibility to refill the oil tank at the end of the tenancy. The evidence establishes that the oil tank was empty at the end of the tenancy and that the Landlord hired an Oil Burner Technician to restore the furnace to working condition and refilled the oil tank.
- [26] The Landlord submitted into evidence an invoice from Irving Oil.
- [27] The Tenants did not dispute the Landlord's claim.
- [28] I find that the Landlord has established a valid claim, in the amount of \$872.02.

3. Cleaning

- [29] Clause 39(2)(a) of the *Act* states:

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...*

- [30] The Landlord is seeking compensation for cleaning in the amount of \$1,725.00 (\$1,500.00 + HST). The Landlord stated that the Unit was very dirty when he inspected the Unit at the end of October 2024. The Landlord submitted photographs of the Unit from the end of October 2024 and an emailed invoice from his cleaner.
- [31] The Tenants stated that they did a quick cleaning of the Unit, but it was not professionally cleaned.
- [32] I note that clause 39(2)(a) does not require a tenant to professionally clean a rental unit. Only to reasonably clean the rental unit. The standard is reasonably clean.
- [33] I find that the Unit was abandoned, and left in a condition below a reasonably clean standard. The Landlord submitted an emailed invoice in the amount of \$1,725.00. This invoice does not provide a detailed breakdown of the hourly rate, labour, and material costs. The invoice only mentioned that the cleaner finished cleaning at 9:00 p.m. on November 14, 2024.
- [34] Upon a review of the evidence, I find that the Landlord is entitled to compensation for cleaning in the amount of \$614.00. This represents an adjustment to bring the Unit to a reasonably clean standard rather than a professionally clean standard. Calculated as followed:
- $\$30.00 \times 12 \text{ hrs.} = \$360.00 \times \$54.00 \text{ (HST)} = \$414.00 + \$200.00 \text{ (cleaning materials)}$.

- [35] I find that the Landlord has established a valid claim, in the amount of \$614.00.

4. Damage

- [36] The Landlord is seeking \$1,750.00 for undue damage to the Unit.
- [37] The Landlord stated that Tenants did modifications to the Unit without seeking the Landlord's permission. The bathroom flooring was removed and changed. The bathroom was painted. There were built-in shelves which were removed in one of the Unit's rooms. There was also some lawn damage.
- [38] The Landlord did not submit receipts or invoices into evidence. The Landlord stated that some of the work was on-going and required the weather to warm before repairs could be completed.

- [39] The Tenants admitted to some of the damage, however, also stated that some of the Landlord's described damage was pre-existing. The Tenants admitted that they did not seek the Landlord's permission to modify some things in the Unit. The Tenants stated that the bathroom had original flooring that was old. The Tenant stated that the built-in shelves were not damaged, they were just unscrewed.
- [40] I have reviewed the evidence and I find that the Landlord has established a claim for damage. However, I note that the Island Regulatory and Appeals 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.
- [41] Based upon the evidence in this case, I find that the Landlord is entitled to 80% of his claim. The claim is allowed in the amount of \$1,400.00.

Security Deposit

- [42] The Tenants agreed that the Landlord could keep the security deposit, including interest to offset the Tenants' liabilities.
- [43] I find that the Landlord can keep the Tenants' security deposit, including interest in the total amount of \$2,066.37.

Disposal of Personal Property

- [44] The parties agreed that the Tenants would collect their personal property on Monday, April 21, 2025. The parties have not contacted the Rental Office to update on whether or not the Tenants have collected their personal property.
- [45] The Landlord can dispose of the Tenants' remaining personal property on the inventory list on or after May 23, 2025.

Pre-Tenancy & Post-Tenancy Inspection Reports

- [46] I note that all tenancies that begin on April 8, 2023 onwards, require a pre-tenancy and post-tenancy inspection to be completed. Subsections 18(3) and 38(3) of the *Act* require a landlord to complete a pre-tenancy and post-tenancy inspection report in the approved form. The *Form 5 – Landlord Condition Inspection Report* is located on the Rental Office's website.

CONCLUSION

- [47] The Application is allowed, in part. The Landlord will keep the Tenants' entire security deposit, including interest, in the amount of \$2,066.37.
- [48] The Tenants must pay the Landlord the balance owing of \$10,319.65 by the timeline below, calculated as follows:

| Item | Amount |
|-----------------------------|--------------|
| Rent Owing (Aug-Dec'24) | \$9,500.00 |
| Fill-up Oil Tank | \$872.02 |
| Cleaning | \$614.00 |
| Damage | \$1,400.00 |
| Security Deposit + Interest | (\$2,066.37) |
| Balance | \$10,319.65 |

- [49] The Landlord can dispose of the Tenants' personal property on the inventory list on or after May 23, 2025.

IT IS THEREFORE ORDERED THAT

1. The Landlord will keep the Tenants' security deposit, including interest, in the amount of \$2,066.37.
2. The Tenants will pay the Landlord the amount of \$10,319.65 by July 2, 2025.
3. The Landlord can dispose of the Tenants' personal property on the inventory list on or after May 23, 2025.

DATED at Charlottetown, Prince Edward Island, this 2nd day of May, 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.