

INTRODUCTION

- [1] The Landlord wants to keep the Tenant's security deposit plus additional compensation for rent owing, cleaning, a showerhead replacement and a lock replacement, for a total claim of \$1,221.75.

DISPOSITION

- [2] The Landlord has established part of its claims, in the amount of \$846.00. The Landlord's other claims are denied.
- [3] The Landlord will retain the entire security deposit, including interest, in the amount of \$812.33. The Tenant will pay the Landlord additional compensation of \$33.67.

BACKGROUND

- [4] The Unit is an apartment located in a 14-unit building that the Landlord has owned since 2015.
- [5] The Landlord and the Tenant entered into a written, month-to-month tenancy agreement for the Unit that started on July 1, 2024 (the "Tenancy Agreement"). A security deposit of \$796.00 was paid on or about June 24, 2024. Rent in the amount of \$796.00 was due on the first day of the month.
- [6] On January 9, 2025 the Tenant text messaged the Landlord's representative (the "Representative") stating that the Tenant would be vacating the Unit (the "Notice"). For the reasons below, I have found that the Tenancy Agreement ended on February 28, 2025.
- [7] On January 12, 2025 the Tenant vacated the Unit.
- [8] On February 15, 2025 the Landlord emailed the Residential Tenancy Office (the "Rental Office") and the Tenant a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") seeking to retain the security deposit and additional compensation.
- [9] The Application was considered filed on February 18, 2025 because the Rental Office was closed from February 15 to February 17, 2025 for the Islander Day long weekend (subsection 33(7) of the *Interpretation Act*).
- [10] On March 19, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for May 1, 2025, along with a copy of the Application.
- [11] On April 28, 2025 the Rental Office emailed the parties an evidence package. On April 30, 2025 the evidence package was updated and sent to the parties (the "Evidence Package").
- [12] On April 30, 2025 the Rental Office added 3-pages of additional evidence (the "Additional Evidence") to the record that were submitted by the Tenant.
- [13] On May 1, 2025 the Representative, the Tenant and the Tenant's support person participated in a teleconference hearing. The parties confirmed receipt of the Evidence Package and the Additional Evidence and confirmed that all documents submitted to the Rental Office were included.

ISSUE

- A. Has the Landlord established claims against the Tenant for rent owing, cleaning, a showerhead replacement and a lock replacement?

PRELIMINARY MATTERS

- [14] The Tenant stated that the Landlord included an incorrect first name and pronouns on the Application. The Tenant argued that the Application should be dismissed.
- [15] Based upon the evidence presented, I am satisfied that the Landlord included an incorrect first name and incorrect pronouns on the Application. The Application was amended under clause 80(3)(f) of the *Residential Tenancy Act* (or the “Act”) to remove the incorrect first name and pronouns.
- [16] The Landlord included the Tenant’s correct first name after the Tenant’s last name. Although the correct first name and last name are in the wrong order, this is not a sufficient basis to dismiss the Application.
- [17] The Tenant also argued that the Landlord did not file the Application in time.
- [18] I find that the Landlord filed the Application by the 15-day timeline in subsection 40(1) of the *Act*.
- [19] For the reasons below, I have found that the Tenancy Agreement ended on February 28, 2025.
- [20] Therefore, the Landlord was required to file the Application on or before March 17, 2025 because the fifteenth and sixteenth days after the tenancy ended were Saturday and Sunday. The final possible date to file the Application was extended from March 15 to March 17, 2025, the next day that the Rental Office was open, under subsection 33(7) of the *Interpretation Act*.
- [21] The Application was filed on February 18, 2025, well within this timeline.

ANALYSIS**February 2025 Rent**

- [22] The parties agree that the Tenant paid January 2025 rent. The parties raised issues regarding February 2025 rent.
- [23] Subsection 55(2) of the *Act* provides the rules regarding the end of a periodic tenancy by notice:
- 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.
- [24] On January 9, 2025 the Tenant text messaged the Representative stating that they would be moving out of the Unit by the end of the month. The Tenant’s Notice only ended the Tenancy Agreement effective February 28, 2025 under subsection 55(2).
- [25] Clause 40(3)(a) permits a landlord to keep a security deposit through a written agreement with a tenant:

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...

- [26] The Landlord kept the Tenant's security deposit for February 2025 rent based upon a text message from the Tenant in mid-January 2025, which stated:
- "Just take my deposit as last months rent like I'm not wasting anymore of my energy on this I'm took sick. The health department will be by though. So good luck with that."*
- [27] I note that, based upon the content of the message, the Landlord would be expecting to keep the security deposit for February 2025 rent, in the amount of \$796.00.
- [28] However, the Tenant has raised issues regarding the condition of the Unit. Therefore, I have considered whether there is sufficient evidence to terminate the Tenancy Agreement early.
- [29] The Tenant provided two letters dated January 15, 2025 and January 16, 2025 and the other evidence regarding mould. Although these letters raise concerns with the Unit's condition, I find that there is insufficient evidence to end the tenancy before February 28, 2025.
- [30] I note that the Department of Environmental Health ("EH") has authority to inspect residential rental properties and issue reports under the *Public Health Act Rental Accommodation Regulations*.
- [31] EH reports normally make observations on the condition of a rental unit. These reports also provide required and recommended steps and a timeline for addressing any problems. EH inspectors are subject matter experts that can provide relevant opinion evidence on whether a rental unit is safe for occupation by a tenant.
- [32] In this case the EH has not inspected the Unit and I do not have the benefit of their evidence.
- [33] The Tenant's written evidence discusses a contractor's opinion on the Unit's condition. However, the contractor did not participate in the teleconference hearing and I do not have direct testimony from this person.
- [34] I also note that there is limited photographic evidence regarding mould in the Unit.
- [35] I find that I have insufficient evidence to terminate the tenancy early due to mould issues.
- [36] I am satisfied that the Landlord engaged in sufficient efforts to try to re-rent the Unit. The Landlord fulfilled its responsibility to try to reduce (mitigate) rental income losses for February 2025. The Landlord did not re-rent the Unit until March 2025.
- [37] The Landlord has established a claim for February 2025 rent, in the amount of \$796.00.

Cleaning

- [38] 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...

- [39] In order for a landlord to establish a claim for unreasonable cleanliness or unreasonable damage it is important to establish the rental unit's baseline condition at the beginning of the tenancy.
- [40] Sections 18 and 38 mandate inspections at the beginning and end of the tenancy. Landlords must provide tenants with two reasonable opportunities to inspect rental units together. A written inspection report must be completed and signed. Both parties must receive a copy of the report.

- [41] Landlords are required to complete inspection reports and provide tenants with a copy even when the tenants do not participate in the inspections.
- [42] These inspections direct landlords' and tenants' minds to any uncleanliness or damage existing at the beginning of the tenancy.
- [43] Landlords are responsible for ensuring that the move-in and move-out inspections are completed.
- [44] When landlords follow this process the baseline condition of the rental unit is much clearer.
- [45] Unfortunately, what frequently occurs is that landlords do not follow the mandatory inspection process. Then, when the landlords make cleaning and damage claims, they have insufficient evidence to prove that the tenants were responsible for the cleaning and damage because the baseline condition is in dispute. Tenants are not responsible for pre-existing damage or for damage that is reasonable wear and tear.
- [46] When landlords fail to follow the mandatory inspection process, they do so at their own financial peril.
- [47] In this case there is limited objective evidence regarding the Unit's baseline condition.
- [48] The Representative did not complete a move-in or move-out inspection report. The Representative stated that the photographs he submitted into evidence were taken on or after February 6, 2025, after the Tenant had vacated.
- [49] I also note that the Tenant was only responsible to clean the Unit to a reasonably clean level. The *Act* does not require the Tenant to hire a professional cleaner or to make the Unit move-in ready for the next Tenant.
- [50] Landlord has claimed \$75.00 (3 hours at \$25.00 per hour) for cleaning the Unit after the Tenant moved out.
- [51] The Tenant admitted that they were responsible for some cleaning. The Tenant stated that \$50.00 of cleaning work was needed.
- [52] Based upon the evidence presented, I find that \$50.00 is an appropriate amount for cleaning the Unit for the following reasons. The Landlord did not follow the mandatory process for completing inspection reports. There is an absence of objective evidence showing the initial cleanliness of the Unit. The Landlord's photographs show that some cleaning was necessary but I am not satisfied that more than \$50.00 worth of cleaning work was needed to bring the Unit to a reasonably clean condition.

Showerhead Replacement

- [53] The Landlord claims \$238.05 for a bathroom showerhead replacement. The Representative stated that the showerhead was working at the beginning of the tenancy but did not know how old the showerhead was. The Representative stated that the showerhead was missing at the end of the tenancy.
- [54] The Tenant stated that the showerhead was not working at the beginning of the tenancy. The Tenant stated that they purchased their own showerhead, removed it at the end of the tenancy, and left the original showerhead inside the Unit.
- [55] I find that the Landlord has not established the showerhead claim because there is insufficient evidence regarding its baseline condition.

- [56] This appears to be the exact type of issue that would be identified through a move-in inspection, which the Landlord did not complete.

Lock Replacement

- [57] The Landlord claims against the Tenant for a lock replacement cost of \$112.70. The Representative stated that the Tenant did not return the Unit's key. The Representative stated that the Tenant had access to the manager ring of keys and may have taken the additional copy of the Unit's key. On February 6, 2025 the Representative had the Unit's lock removed and the Tenant's key was not found inside the Unit.
- [58] The Tenant stated that they left their copy of the key in the Unit on January 12, 2025 when they moved out of the Unit. The Tenant denied taking the Unit's key from the manager ring of keys.
- [59] There is insufficient evidence to establish this claim. The Representative did not witness the Tenant taking a key from the master ring of keys and the Tenant denies this allegation. The parties provided conflicting evidence regarding whether the Tenant left their key in the Unit.
- [60] I also note that the Landlord did not complete a move-out inspection report which could have identified whether or not a key was left in the Unit. I note that the Landlord was required to complete a move-out inspection report even if the Tenant did not participate.

Tenancy Agreement Form

- [61] In this case the Landlord used a *Standard Form of Rental Agreement (Form 1)* for the Tenancy Agreement. This was a document prescribed under the former rental legislation, the *Rental of Residential Property Act*.
- [62] Since April 8, 2023 the *Residential Tenancy Act* has been in force on Prince Edward Island. The Landlord must use a tenancy agreement form that complies with the current law.
- [63] Sections 10 and 11 of the *Act* set out required content of tenancy agreements. In particular, subsection 11(2) states:

The landlord shall ensure that the tenancy agreement complies with the requirements of this Act and the regulations and includes

- (a) the provisions set out in Division 4;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord, or the landlord's agent, and the tenant;*
- (f) the services and facilities included in the rent;*
- (g) the amount of rent that was charged, and the services and facilities that were provided, to the previous tenant of the rental unit, unless there was no previous tenant;*
- (h) the name and contact information of any person the tenant is to contact for emergency repairs; and*
- (i) the agreed terms in respect of*
 - (i) the date on which the tenancy starts,*
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis,*
 - (iii) if the tenancy is a fixed-term tenancy, the date on which the term ends,*
 - (iv) the amount of rent payable for a specified period,*
 - (v) the day on which the rent is due and the frequency of payment, and*

(vi) the amount of any security deposit and the date the security deposit was or is required to be paid.

[64] The Rental Office's *Standard Form of Tenancy Agreement (Form 1)* is available online in the Forms section of the Rental Office's website.

[65] The Landlord must use a tenancy agreement form that complies with the *Residential Tenancy Act*.

CONCLUSION

[66] The Application is allowed in part.

[67] The Landlord has established a total claim of \$846.00 (\$796.00 for February 2025 rent plus \$50.00 for cleaning).

[68] The Landlord will keep the Tenant's security deposit, including interest, in the amount of \$812.33. The Tenant will pay the Landlord a balance of \$33.67 by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Landlord will keep the Tenant's security deposit, including interest, in the amount of \$812.33.
2. The Tenant will pay the Landlord the amount of \$33.67 by June 9, 2025.

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

(sgd.) Andrew Cudmore

Andrew Cudmore
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.