

**INTRODUCTION**

- [1] The Tenants seek a return of double the security deposit and additional compensation, for a total claim of \$26,838.68.
- [2] The Landlord seeks to keep part of the security deposit for unpaid rent for October 2024, for a total claim of \$750.00.

**DISPOSITION**

- [3] I find that the Tenants have not established their claims.
- [4] I find that the Landlord will keep \$750.00 of the security deposit for rent for October 2024.
- [5] I find that the Landlord will return the remainder of the security deposit, including interest, to the Tenants.

**BACKGROUND**

- [6] The Unit is one-half of a duplex (the "Residential Property") owned by the Landlord.
- [7] The Tenants and a previous landlord entered into a written, fixed-term tenancy agreement for the Unit from November 1, 2017, to April 30, 2018. An \$800.00 security deposit was paid at the beginning of the tenancy.
- [8] On October 24, 2018, the Landlord purchased the Residential Property, and the tenancy continued on a month-to-month basis.
- [9] On April 20, 2023, the parties participated in a teleconference hearing with the Residential Tenancy Office (the "Rental Office"). The Rental Office ordered repairs to be completed to the Unit.
- [10] On September 26, 2023, the parties participated in a second teleconference hearing with the Rental Office. The Rental Office re-ordered the repairs to be completed to the Unit, and the rent was reduced to \$750.00 until the repairs were completed.
- [11] On October 31, 2024, the Tenants moved out of the Unit, and the tenancy ended by mutual agreement.
- [12] On November 14, 2024, the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "First Landlord Application") with the Rental Office seeking rent owing, to keep the security deposit, and to dispose of the Tenants' personal property.
- [13] On January 21, 2025, the Landlord filed a second *Form 2(B) Landlord Application to Determine Dispute* (the "Second Landlord Application") with the Rental Office seeking to keep the security deposit for rent owing. The Landlord's two applications will be called the "Landlord Applications" in this decision.
- [14] On January 21, 2025, the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office, seeking a return of double the security deposit and additional compensation, totalling \$26,838.68.
- [15] On February 5, 2025, the Rental Office emailed the parties notice of a teleconference hearing scheduled for March 18, 2025.
- [16] On March 7, 2025, the Rental Office emailed a 204-page PDF (the "First Evidence Package") and a six-page PDF (the "Second Evidence Package") to the parties.

- [17] On March 12, 2025, the Rental Office shared a 19-page PDF and a video (the “Third Evidence Package”) with the parties via TitanFile.
- [18] On March 17, 2025, the parties were notified that the hearing would be rescheduled.
- [19] On March 27, 2025, the Rental Office emailed the parties notice of a rescheduled teleconference hearing for April 24, 2025.
- [20] On April 16, 2025, the Rental Office shared a 317-page PDF and 15 videos (the “Fourth Evidence Package”) with the parties via TitanFile.
- [21] On April 24, 2025, the parties were notified that the hearing would be rescheduled to April 30, 2025.
- [22] On April 30, 2025, the Landlord, two Landlord witnesses, the Landlord’s legal counsel, and the Tenants participated in a teleconference hearing. The parties stated they received a copy of the evidence packages and that all submitted evidence was included.
- [23] At the beginning of the hearing, the parties agreed that the matter of the disposal of the Tenants’ personal property had been resolved.

## ISSUES

- A. Must the Tenants pay the Landlord rent for October 2024?
- B. Must the Landlord return double the security deposit to the Tenants?
- C. Must the Landlord compensate the Tenants?

## ANALYSIS

### A. Must the Tenants pay the Landlord rent for October 2024?

- [24] The Landlord stated that the Tenants did not pay rent for October 2024. He stated that the Landlord Applications incorrectly stated that the Tenants owed rent for two months; however, he was only seeking to keep \$750.00 of the security deposit for rent owing for October 2024.
- [25] The Tenants agreed that the Landlord could keep \$750.00 of the security deposit for rent owing for October 2024.
- [26] I find that the Landlord will keep \$750.00 of the security deposit for rent owing for October 2024.

### B. Must the Landlord return double the security deposit to the Tenants?

- [27] The Tenants stated that the Landlord did not return the security deposit within 15 days of the end of the tenancy, and they are seeking a return of double the security deposit.
- [28] The Landlord disputed that the Tenants were entitled to double the security deposit. The Landlord stated that he applied to keep the security deposit within 15 days when he filed the First Landlord Application.
- [29] The evidence establishes that the tenancy ended on October 31, 2024, and the First Landlord Application was filed and served on November 14, 2024. On the First Landlord Application, in the particulars of the dispute, the Landlord stated, *“If I am asked to remove their personal items, I’d like to make a claim against the security deposit of the cost to remove and dump the items.”*

- [30] I find that, although the Landlord did not check the section on the First Landlord Application stating that he was claiming against the security deposit, the Landlord did state in the particulars that he was seeking to keep at least part of the security deposit for removing the Tenants' personal property. The Landlord also checked the section stating that he was seeking rent owing, and both of these claims total more than the amount of the security deposit.
- [31] I find that the Landlord has complied with the Section 40 requirements by making an application with the Rental Office to keep the security deposit within 15 days of the end of the tenancy. Therefore, an award of double the security deposit is not warranted.

**C. Must the Landlord compensate the Tenants?**

**Moving/Relocation Expenses**

- [32] The Tenants stated that they are seeking \$4,260.00 for: moving expenses, the security deposit at their new unit, relocation/driving costs for a year as their new residence is further from work/daycare, and cleaning costs of the Unit. The Tenants stated that if they had not been forced to move, they would not have incurred these expenses.
- [33] The Tenants stated that the Landlord engaged in a "constructive eviction" by forcing the Tenants to vacate the Unit without issuing an eviction notice. The Tenants stated that the Landlord did not complete repairs in a timely manner during their tenancy. The Unit became uninhabitable due to health and safety risks, including the presence of mould, and the Tenants had to move to protect their health and safety.
- [34] The Tenants stated that during their previous Rental Office hearings, the Landlord stated that he could not afford to complete repairs, nor could he find contractors. After the Tenants moved out, the Landlord began extensive repairs to the Unit, including renovating the kitchen and removing mouldy insulation. The Tenants stated that the Landlord just waited for them to move before starting the required renovations and repairs. The Tenants stated that the Landlord acted in "bad faith" because he was not being truthful when he stated that he could not afford repairs or find contractors.
- [35] The Landlord disputed that the Tenants were entitled to compensation and stated that the term "constructive eviction" is not in the *Residential Tenancy Act* (the "Act"). The Landlord stated that the Tenants were not evicted, and he disputed that he waited until the Tenants moved out to complete repairs. After the Tenants moved out, the Landlord inspected the Unit and found some repairs that were required before renting to new tenants. The Landlord's father-in-law was also available to help him with repairs at that time.
- [36] The Landlord stated that when Environmental Health ("EH") and the Rental Office ordered repairs to the Unit in 2023, it was just after Hurricane Fiona. He stated that he tried to get contractors to assist in repairing the Unit, but he was unable to find anyone qualified at that time.
- [37] The Landlord stated that he was able to complete most of the ordered repairs to the Unit, and EH re-inspected the Unit on April 3, 2024. EH stated in a letter dated April 5, 2024, that the Landlord was only required to "*replace the screens of patio door and hall window so that they can be opened by tenants for natural ventilation.*" The Landlord stated that EH found that no moisture source was present, and EH stated that the Tenants were required to keep the Unit clean and to clean surface mould.
- [38] The Landlord stated that he also completed other repairs to the Unit and paved the driveway. He stated that his submitted messages show that the Tenants were happy with these additional repairs. The Landlord stated that he spent approximately \$18,000.00 repairing the Unit.

- [39] The Landlord's father-in-law testified that he assisted the Landlord with inspecting the Unit after the Tenants moved out. He stated that the required repairs the Landlord completed after the Tenants moved out were not discovered until after the Unit was empty. He stated that he was not aware of any plans to wait for the Tenants to move out to complete these repairs. He stated that he did not observe any mould in the insulation they removed or within the kitchen's walls.
- [40] I find that the Tenants have not provided sufficient evidence to establish that the Landlord must compensate the Tenants \$4,260.00 for moving/relocation expenses.
- [41] Clause 85(1)(d) of the Act states that after hearing an application, the Director may make an order requiring a landlord to compensate a tenant for a loss suffered or expense incurred as a result of a contravention of the Act or the tenancy agreement.
- [42] The Tenants stated that they have incurred, or will incur, \$4,260.00 in expenses as a result of having to move from the Unit, due to a "constructive eviction." However, the term "*constructive eviction*" is not stated or defined in the Act. Furthermore, I find that the Tenants have provided insufficient evidence to establish that any sections of the Act or the tenancy agreement were breached that support their claims.
- [43] The Tenants stated that the Landlord waited until the Tenants moved out to complete necessary repairs. However, the repairs that the Landlord completed were not repairs that the Rental Office or EH previously ordered. The Landlord and Landlord's father-in-law stated that the repairs were not discovered until after the Unit was empty.
- [44] The EH letter dated April 5, 2024, stated that the only remaining repair requirements for the Landlord were to replace some screens in the Unit. There is no evidence that EH found the Unit to be unsafe to live in or that the Tenants should move out of the Unit due to health or safety concerns. Furthermore, there is no evidence that the Tenants requested EH to re-inspect the Unit before they moved out.
- [45] The evidence establishes that the Tenants provided the Landlord notice and moved out of the Unit on October 31, 2024. I find that there is insufficient evidence to establish that the Tenants were evicted from the Unit or that the Landlord engaged in a "constructive eviction."
- [46] I find that the Tenants have not established that the Landlord has contravened clause 85(1)(d) of the Act or that the Landlord must compensate the Tenants as a result of a contravention of the Act or the tenancy agreement.

#### **Compensation for Personal Property**

- [47] The Tenants stated that they were seeking \$10,000.00 in compensation for personal property losses incurred due to mould contamination. They stated that the mould issue in the property was extensive, and over 80% of the surfaces of their belongings were affected by mould. The Tenants tried to have the items dry-cleaned, but the dry cleaner could not guarantee the mould would be removed.
- [48] The Tenants stated they had to discard several items, such as a dresser, a couch, a bed frame, as well as thousands of dollars' worth of clothing and accessories. The Tenants provided photographs of some items and a list of the estimated replacement costs of items that they had to discard.
- [49] The Tenants stated that during their tenancy, the Landlord neglected necessary repairs to the Unit, and this caused the mould to form. The Tenants believe that the mould resulted from poor air circulation and damage caused by Hurricane Fiona. The Tenants cleaned mould off the walls and the shower continually, but the mould would return.

- [50] The Tenants stated that around 2020, they did grow legal marihuana in the Unit with the Landlord's permission. They stated that they grew the plants in a sealed tent, so moisture would not affect the Unit. After the Landlord's insurance company inspected the grow area, the insurer required a larger fan for better air circulation. The Tenants decided not to purchase a new fan and stopped growing marihuana in the Unit.
- [51] The Landlord disputed that the Tenants are entitled to compensation for damages to their personal property. The Landlord stated that the Tenants have not provided any objective evidence to support the value of the items claimed.
- [52] The Landlord stated that he does not know how the mould began growing in the Unit. The Landlord stated that the mould may have begun due to moisture because the Tenants were growing marihuana inside the Unit. The Landlord stated that the Unit was also cluttered and unclean, which was noted in the April 5, 2024, EH letter and submitted photographs. The Landlord noted that the EH letter required that the Tenants keep the unit clean and wipe surface mould.
- [53] I find that the Tenants have provided insufficient evidence to establish that the Landlord must compensate the Tenants \$10,000.00 for personal property losses.
- [54] The parties had conflicting theories regarding the cause of the mould in the Unit.
- [55] I have reviewed the two independent inspection reports that EH conducted for the Unit.
- [56] On August 14, 2023, EH sent a letter to the Landlord stating that no mould growth was observed in the Unit during their inspection on August 8, 2023. EH noted that the Tenants reported that they clean the mould, but it comes back after a couple of months. EH recommended that the Landlord determine the source of the mould growth and implement control measures. EH also recommended that the Tenants use a dehumidifier to remove the humidity in the Unit and for the Landlord to fix the bathroom fan.
- [57] On April 5, 2024, EH sent a second letter to the Landlord, which stated that no mould growth was observed in the bathroom and no obvious moisture source was present during their second inspection on April 3, 2024. EH stated that the Landlord installed a dehumidifier, part of the bathroom was painted with mould-resistant paint, and the bathroom fan was working.
- [58] EH noted that there was surface mould on the patio door, the Unit was full of personal belongings, and there were personal items with mould. EH stated that the Tenants were required to keep the Unit clean and sanitary, and the Tenants were to clean surface mould with soap and water.
- [59] I note that after the second EH inspection, there were no further requirements for the Landlord to address ventilation or mould issues. EH did require the Tenants to keep the Unit clean and to wipe surface mould. There is nothing in the April 5, 2024, EH letter which states that the mould in the Unit or on the Tenant's personal property was caused as a result of the Landlord's failure to comply with the Act or the *Public Health Act Rental Accommodation Regulations* (the "Regulations").
- [60] I find that the Tenants have not established that the Landlord has contravened clause 85(1)(d) of the Act or that the Landlord must compensate the Tenants as a result of a contravention of the Act or the tenancy agreement.

### **Right of First Refusal**

- [61] The Tenants stated that they are seeking compensation of \$5,850.00, which is equivalent to three months' rent (\$1,950.00 x 3) at their new residence. The Tenants stated they are seeking this compensation because the Landlord did not provide them the right of first refusal after completing the repairs and renovations at the Unit.

- [62] The Landlord disputed that the Tenants were entitled to this compensation. The Landlord stated that the Tenants were not evicted for repairs or renovations, so the right of first refusal does not apply. The Landlord also stated that the Tenants did not provide any evidence of their current rent to establish the amount they are requesting for compensation.
- [63] I find that the Tenants have not established that the Landlord must compensate the Tenants \$5,850.00 for failing to provide the Tenants a right of first refusal.
- [64] Subsection 68(1) of the Act states that a tenant who receives notice of termination for repairs or renovations may exercise a right of first refusal to occupy the rental unit when the repairs or renovations are completed.
- [65] Subsection 68(4) of the Act states that if a landlord does not offer the tenant the right of first refusal, then the tenant may be entitled to compensation equivalent to three months' rent under the previous tenancy agreement.
- [66] The evidence establishes that the Tenants provided the Landlord notice and moved out of the Unit on October 31, 2024. The evidence does not establish that the Tenants were evicted from the Unit by the Landlord or that they had to leave due to a "constructive eviction." As the Tenants were not evicted for repairs or renovations, subsections 68(1) and 68(4) of the Act do not apply in this case.

### **Pain and Suffering**

- [67] The Tenants stated that they are seeking \$5,000.00 in compensation for pain and suffering. They stated that they had incurred health issues caused by unsafe living conditions due to mould in the Unit. They stated that the mould in the Unit caused them headaches, breathing issues, fatigue, GI issues, and stress.
- [68] The Landlord disputed that the Tenants are entitled to compensation for pain and suffering. The Landlord stated that the Rental Office does not have the jurisdiction to award compensation for pain and suffering.
- [69] I find that the Rental Office does not have the authority (jurisdiction) to award money for personal injury, pain or suffering under the Act. This claim is dismissed.

### **CONCLUSION**

- [70] The Landlord Applications are allowed, and the Tenant Application is denied.
- [71] I find that the Landlord will keep \$750.00 of the security deposit for rent owing for October 2024.
- [72] I find that the Landlord will return the remainder of the security deposit (\$50.00), plus interest (\$75.34), to the Tenants, totalling \$125.34, by the timeline below.

### **IT IS THEREFORE ORDERED THAT**

1. The Landlord will pay the Tenants \$125.34 by June 26, 2025.

**DATED** at Charlottetown, Prince Edward Island, this 26th day of May, 2025.

(sgd.) Mitch King

**Mitch King**  
**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.