

**INTRODUCTION**

- [1] This decision determines two applications filed with the Residential Tenancy Office (the “Rental Office”) under the *Residential Tenancy Act* (the “Act”).
- [2] The parties agree that the Tenant paid a \$1,000.00 security deposit to the Landlord for the Unit. The Landlord claims that the security deposit was already returned to the Tenant.
- [3] The Landlord claims against the Tenant for rent owing, late rent fees, penalties, business income losses, cleaning and damage, in the total amount of \$5,250.00.
- [4] The Tenant claims against the Landlord for double the security deposit plus a return of rent due to the condition of the Unit, in the amount of \$3,000.00.
- [5] The Tenant’s evidence also contained a claim for physical injury and related lost wages, in the amount of \$1,000.00.

**DISPOSITION**

- [6] I find that the Landlord has not returned the Tenant’s security deposit, which currently totals \$1,018.56, including interest.
- [7] I find that the Landlord has established part of its rent owing claim, in the amount of \$650.00. The Landlord’s other claims are denied.
- [8] The Tenant’s claims for double the security deposit and a return of rent are denied.
- [9] I do not have authority (jurisdiction) to consider the Tenant’s personal injury claim and related lost wages.
- [10] The Landlord must return to the Tenant the security deposit balance of \$368.56 by the timeline below.

**BACKGROUND**

- [11] The Unit was a bedroom with shared services and facilities in an eight-bedroom, seven-bathroom dwelling (the “Residential Property”) that the Landlord has owned since May of 2018.
- [12] The Landlord and the Tenant entered into a written, fixed-term tenancy agreement for the Unit for the period of October 1, 2024 to September 30, 2025 (the “Tenancy Agreement”). A security deposit of \$1,000.00 was paid on September 16, 2024.
- [13] The Tenancy Agreement states that the monthly rent was \$1,200.00 and the rent would be reduced to \$1,100.00 if the Tenant was manager of the Residential Property. The rent was due by the first day of the month.
- [14] The parties had an earlier Rental Office dispute regarding the Landlord serving an eviction notice to the Tenant and a claim by the Tenant for a return of rent.
- [15] On December 2, 2024 Order LD24-405 was issued which ordered that the Tenancy Agreement would continue and the Tenant could continue to live in the Unit. The Tenant’s compensation claim was denied.
- [16] On February 21, 2025 the Tenant vacated the Unit. For the reasons below I find that the Tenancy Agreement ended on this date.

- [17] On February 25, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* with the Rental Office to keep the security deposit and to make financial claims against the Tenant. This application was amended on March 3 and 4, 2025 (the "Landlord Application").
- [18] On March 3, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* with the Rental Office with financial claims against the Landlord. This application was amended on March 6, 2025 (the "Tenant Application").
- [19] On April 1, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for May 15, 2025, along with a copy of the Landlord Application and the Tenant Application.
- [20] On May 13, 2025 the Rental Office emailed the parties a 110-page PDF document ("PDF") and video evidence (the "Evidence Package").
- [21] On May 15, 2025 the Landlord, the Tenant and an interpreter participated in a teleconference hearing.
- [22] During the hearing the Landlord confirmed that she received the Evidence Package and confirmed that all documents and videos submitted to the Rental Office prior to the hearing were included. The Landlord emailed the Rental Office additional evidence during the hearing which was immediately forwarded to the Tenant. The Tenant stated that she had sent her evidence to the Rental Office in two emails on April 29 and 30, 2025, which contained one video.
- [23] The parties were provided additional time after the hearing to further review the Evidence Package and provide additional evidence and submissions. The parties submitted a significant amount of additional evidence and arguments.

## ISSUES

- A. Did the Landlord already return the security deposit to the Tenant?
- B. Must the Landlord pay the Tenant double the security deposit?
- C. Can the Landlord automatically keep the security deposit under the Tenancy Agreement?
- D. Does the Tenant owe rent to the Landlord?
- E. Must the Tenant pay the Landlord \$400.00 for late rent charges?
- F. Is the Tenant responsible for cleaning expenses?
- G. Is the Tenant responsible for damage costs?
- H. Has the Landlord established a claim for business income losses?
- I. Has the Tenant established a claim regarding insufficient heat?
- J. Do I have authority (jurisdiction) to determine the Tenant's personal injury claim and related losses?

## ANALYSIS

### A. Did the Landlord already return the security deposit to the Tenant?

- [24] On September 16, 2024 the Tenant paid a \$1,000.00 security deposit to the Landlord.

- [25] The Landlord argued that the security deposit had already been returned to the Tenant through two \$500.00 e-Transfers on October 7, 2024.
- [26] The Tenant stated that one of these \$500.00 payments was for one month of cleaning services provided by the Tenant. The other \$500.00 payment was for the purchase of glasses, napkins, snacks for Airbnb guests and other items.
- [27] I find that the Landlord's two payments to the Tenant on October 7, 2024 were not security deposit payments. Based upon the evidence presented, it appears that these two payments were unrelated to the security deposit. These payments were made during a time where the Tenant was also providing services to the Landlord.
- [28] I note that a landlord would not normally return a security deposit to a tenant only seven days into a one-year, fixed-term tenancy agreement.
- [29] Further, the correspondence submitted by the parties indicates that the security deposit was still in existence after October 7, 2024.
- [30] The Landlord included a translated message from November 21, 2024 (PDF54) in which the Landlord stated:

*"I can refund your security deposit after you figure out the petty cash and the hourly rate."*

- [31] The Landlord's reference to the Tenant's "security deposit" on November 21, 2024 is inconsistent with the Landlord previously returning the security deposit on October 7, 2024. The references to "petty cash and hourly rate" appear to relate to other disputes between the parties that are not landlord-tenant in nature and are beyond my authority (jurisdiction) to determine.
- [32] The Tenant's additional evidence on May 20, 2025 included the following messages from the Landlord:

October 6, 2024

*"I'll transfer 500 yuan as an emergency fund to you tonight. I haven't had time to reconcile with you yet..."*

December 3, 2024:

*"...The deposit is still in my possession, right? I won't refuse to refund. Your deposit. I'm just saying that normally deducting the money you owe makes more sense."*

- [33] I find that the Landlord has not returned the Tenant's \$1,000.00 security deposit or applicable interest.
- [34] I also note the following rules for holding security deposit funds stated in subsections 14(7) and (8) of the Act:
- (7) *Within two banking days of receipt of a security deposit, the landlord shall deposit it in an interest-bearing account located in the province at a financial institution authorized to accept deposits.*
- (8) *Where a landlord has three or more rental units, the interest-bearing account referred to in subsection (7) shall be a trust account used exclusively for security deposits.*

**B. Must the Landlord pay the Tenant double the security deposit?**

- [35] The Tenant claimed against the Landlord for double the security deposit.
- [36] On February 25, 2025, the Landlord filed the Landlord Application with the Rental Office and served a copy to the Tenant. This was completed four days after the Tenancy Agreement ended.
- [37] I find that the Landlord has complied with the deadline contained in clause 40(1)(b) of the *Act*.
- [38] Therefore, the Landlord is not required to pay the Tenant double the security deposit under subsection 40(4).

**C. Can the Landlord automatically keep the security deposit under the Tenancy Agreement?**

- [39] The Tenancy Agreement includes numerous clauses claiming that the Landlord can automatically keep the security deposit in certain circumstances. Examples of these clauses are as follows:

2(2) *In the event the lessee wish to cancel this lease agreement before the commencement date, the deposit and 1st month's initial payment will be forfeited.*

3(5) *The lessee terminates the contract and quits the lease in advance, without notifying the lessor 30 days in advance in writing and without finding a new lessee, the deposit will not be refunded, unless the lessee finds a new lessee (subject to the consent of the lessor) to sign a new lease contract and has paid the deposit.*

3(4) *The security deposit will not be refunded if the lessor terminates the contract or issues an eviction letter due to any breach of the contract by the lessee.*

3(7) *There is strictly no refund of the deposit in the event of early termination of the lease agreement, nonfulfillment, breach of contract, or lessees' brouchure, and causes losses or serious consequences.*

3(10) *If this lease agreement is terminated ahead of schedule due to a breach by the lessee, The lessor shall have the right to deduct all the deposit as liquidated damages.*

- [40] I note that these types of clauses conflict with subsection 15(a) of the *Act*, which states:

*A landlord shall not*

*...*

*require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement.*

- [41] I find that the clauses in the Tenancy Agreement automatically allowing the Landlord to keep the security deposit are invalid.
- [42] Therefore, the Landlord's claim against the Tenant based upon the terms of the Tenancy Agreement for a \$1,000.00 security deposit penalty is denied.

**D. Does the Tenant owe rent to the Landlord?**

- [43] The parties agree that there is no rent owing for October 2024, the first month of the Tenancy Agreement. The parties agree that the Tenant paid \$1,100.00 per month in November 2024, December 2024 and January 2025. The parties also agree that \$550.00 was paid for February 2025.

- [44] The Landlord argues that the Tenant should have paid \$1,200.00 per month from November 2024 to February 2025. The Landlord argues that the Tenant owes \$950.00 in rent for this period.
- [45] The Tenant argued that the Landlord agreed to reduce the rent to \$1,100.00 from November 2024 until the Tenant moved out.
- [46] The Tenant's additional evidence on May 20, 2025 included an email from the Landlord which appears to have been sent on October 29, 2024. The email provides correspondence regarding an agreement for the monthly rent to be reduced by \$100.00.
- [47] I note that in early November 2024 the Landlord sought to end the Tenancy Agreement for non-payment of a monthly rent of \$1,200.00.
- [48] This was part of the eviction dispute in Order LD24-405. This earlier decision determined that the Landlord could not seek to end the Tenancy Agreement for non-payment of December 2024 rent in early November.
- [49] The Tenant's additional evidence on May 20, 2025 included the following message from the Landlord on December 3, 2024:
- "... You've been in arrears for two consecutive months, 100 yuan each time. And it's been 20 days, right..."*
- [50] I have reviewed the parties evidence and there are discussions regarding a rent reduction. However, I am not satisfied that there was a meeting of the minds regarding the terms of the agreement.
- [51] Further, even if the parties had agreed on the terms stated in the October 29, 2024 email, I am not satisfied that the Tenant complied with these terms.
- [52] I find that the Tenant owes rent of \$100.00 per month for November 2024, December 2024 and January 2025.
- [53] The Landlord also seeks rent owing for all of February 2025.
- [54] I find that the Landlord can only claim up to February 21, 2025 in the amount of \$900.00.
- [55] I note that the Landlord previously sought to end the Tenancy Agreement, as stated in Order LD24-405.
- [56] Upon a review of the evidence it is clear that the Landlord wanted the Tenant to move out as soon as possible. The Landlord requested the Tenant to move out immediately before any eviction notice could have taken effect.
- [57] For instance, the Landlord provided the following comment in the Landlord's documentary evidence (top of PDF45):
- "I sent a WeChat message at Feb-18, asking her to hand over the property on the spot and to clean up, but she refused."*
- [58] In these circumstances, I find that the Tenancy Agreement ended on February 21, 2025, the date the Tenant vacated the Unit. The Landlord can only claim against the Tenant for February 2025 rent up this date.

- [59] The Tenant is responsible for prorated February 2025 rent in the amount of \$900.00 (21 days divided by 28 days multiplied by \$1,200.00). The Tenant paid \$550.00 for this month and therefore rent owing in the amount of \$350.00 remains.
- [60] The Landlord has established a rent owing claim against the Tenant in the total amount of \$650.00, based upon the following unpaid rent:
- November 2024 - \$100.00
  - December 2024 - \$100.00
  - January 2025 - \$100.00
  - February 2025 - \$350.00

**E. Must the Tenant pay the Landlord \$400.00 for late rent charges?**

- [61] Statutory condition 6.8. of the former rental legislation, the *Rental of Residential Property Act*, permitted a landlord to include a monetary penalty in a rental agreement for late rent payments, stating as follows:

*Late Payment Penalty*

*Where the rental agreement contains provision for a monetary penalty for late payment of rent, the monetary penalty shall not exceed one per cent per month of the monthly rent.*

- [62] The *Act* and the *Residential Tenancy Regulations*, which have been in force since April 8, 2023, do not specifically mention late payment penalties or fees.
- [63] Subsection 20(1) of the *Act* states prohibited fees and subsection 20(2) states permitted fees. The *Residential Tenancy Regulations* do not provide for other fees under section 20.
- [64] Earlier drafts of the *Residential Tenancy Act* permitted landlords to charge a late rent fee up to \$25.00.
- [65] Clause 21(2)(d) of the publically available 2019 *Residential Tenancy Act* Consultation Draft stated:

*A landlord may charge a non-refundable fee for*

- (d) *an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;*

[Emphasis added.]

- [66] The words "*or for late payment of rent*" were removed from the permitted fees currently contained in subsection 20(2) before the *Act* came into force on April 8, 2023.
- [67] This legislative history indicates that the *Act* does not authorize late rent fees.
- [68] Furthermore, I find that the late rent fees clauses in the Tenancy Agreement between the parties are unenforceable.
- [69] The first page of the Tenancy Agreement states as follows:
- "The 1th of each month will due to pay the rent. If later than that CAD\$20 per day late fee will be generated."*
- [70] This clause asserts that the Landlord can charge late rent fees ranging from \$560.00 to \$620.00 per month, depending on the length of the month.

[71] Clause 2(6) states as follows:

*“If the lessee does not pay the rent, the deposit, the service charges or any other sums owing to the lessor under this by the due date (whether or not formally demanded), the lessee must pay late payment interest of 5% per day on that sum from the due date until the sum is paid to, or accepted by, The Lessor. Nothing in this clause entitles the lessee to withhold or delay any payment or affect the rights of the lessor in relation to non-payment.”*

[72] I note that the 5.00% daily interest charge would amount to an annual interest rate of 1,825.00% on the principal sum.

[73] Even if late fees were authorized by the *Act*, these clauses are unenforceable because they are unconscionable, being unfairly oppressive to the Tenant.

**F. Is the Tenant responsible for cleaning expenses?**

[74] 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...*

[75] 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.

[76] 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.

[77] Landlords are required to complete inspection reports and provide tenants with a copy even when the tenants do not participate in the inspections after having been provided two reasonable opportunities.

[78] These inspections direct landlords' and tenants' minds to any uncleanliness or damage existing at the beginning of the tenancy.

[79] Landlords are responsible for ensuring that the move-in and move-out inspections are completed.

[80] When landlords follow this process the baseline condition of rental units are much clearer.

[81] Unfortunately, what frequently occurs is that landlords do not follow the mandatory inspection process. Then, the landlords make cleaning and damage claims with insufficient evidence to prove that the tenants were responsible for the cleaning and damage because the baseline condition is in dispute.

[82] When landlords fail to follow the mandatory inspection process, they do so at their own financial peril.

[83] I note that the Tenancy Agreement started on October 1, 2024, almost eighteen months after the *Act* came into force. Move-in and move-out inspection reports were mandatory.

[84] In this case there is limited objective evidence regarding the Unit's baseline condition around October 1, 2024.

- [85] I note that the best practice for photographic evidence is to include date stamps to show when the photographs were taken.
- [86] The Landlord stated that the undated before photographs of the Unit (PDF42) were taken sometime in 2023. This would range somewhere between nine months and twenty-one months before the Tenancy Agreement started.
- [87] Further, there are also issues with the Landlord's evidence after the Tenancy Agreement ended. The Landlord stated that some of the photographs were taken in April 2025, being at least five weeks after the Tenant vacated the Unit.
- [88] Some of the evidence includes close-up photographs after the Tenant vacated the Unit without comparable close-up photographs showing the same area around the beginning of the Tenancy Agreement.
- [89] I also note that the Tenant was only responsible under the *Act* to leave the Unit in a reasonably clean condition. The Tenant was not responsible to leave the Unit in perfect condition or move-in ready for the next occupant. The *Act* does not permit the Landlord to require a higher standard than reasonably clean.
- [90] For these reasons I find that the Landlord's cleaning claims are denied.

**G. Is the Tenant responsible for damage costs?**

- [91] The Landlord claims for \$300.00 for the cost to replace a leather chair (the "Chair").
- [92] I am not satisfied that the Tenant is responsible for this cost.
- [93] As noted above, the Landlord did not complete a move-in inspection. The Landlord stated that the leather chair was purchased from the former owner of the Residential Property in May of 2018. The Landlord was unable to find a photograph of the Chair and instead submitted into evidence an image the Landlord found of a similar chair.
- [94] The Tenant stated that the Chair was taken outside because it was damaged at a time when the Tenant was acting as the Landlord's property manager.
- [95] Based upon the evidence presented, I am not satisfied that the Chair was in a usable state when it was taken outside by the Tenant.
- [96] Further, it is unclear whether this is a landlord-tenant claim within my authority to decide or instead a landlord-property manager claim that is outside my authority.
- [97] For these reasons, the Landlord's \$300.00 compensation claim regarding the Chair is denied.
- [98] The Landlord claims that the Tenant removed some items from the Unit that cost approximately \$200.00.
- [99] The Landlord referred to the photographs of the Unit taken in 2023 (PDF42).
- [100] The Tenant denies the Landlord's claim.
- [101] In the absence of move-in and move-out inspection reports, photographs taken close to the start of the Tenancy Agreement and with the Tenant disputing these claims, I find that the Landlord has provided insufficient evidence for this claim.

**H. Has the Landlord established a claim for business income losses?**

- [102] The Landlord claims that the Tenant is responsible for \$2,400.00 in business income losses because the Tenant delayed another tenant ("TW") from moving into Room 6 of the Residential Property. The Landlord claims against the Tenant for Room 6 income losses for November and December of 2024.
- [103] The Landlord stated that the Tenant engaged in disruptive and threatening behaviour towards TW, who had already signed a tenancy agreement for Room 6.
- [104] The Tenant denies responsibility for this loss.
- [105] I note that the Landlord's business loss claim is not based upon direct actions between the Landlord and the Tenant. Instead, the Landlord's claim for business losses is based upon actions between the Tenant and another tenant, TW.
- [106] It does not appear that subsection 85(1) authorizes a claim for business income losses based upon actions directly between tenants.
- [107] Further, TW did not participate in the teleconference hearing. Instead, the Landlord provided message correspondence to support this sizeable claim of \$2,400.00. I find that the Landlord has also provided insufficient evidence to support this claim.

**I. Has the Tenant established a claim regarding insufficient heat?**

- [108] The Tenant claims against the Landlord for insufficient heat from November 1 to December 15, 2024. The Tenant stated that during this period the indoor temperature typically ranged from 10 to 15 degrees Celsius. The temperature sometimes decreased to 7 degrees Celsius at night.
- [109] The Tenant's additional evidence on May 20, 2025 included messages from the Tenant on October 4, 2024 regarding heating issues.
- [110] I find that the evidence presented does not support this claim.
- [111] The Landlord offered the Tenant another bedroom in the Residential Property on a different level. The Landlord's evidence was that the temperature of this other room was a stable 23 degrees Celsius.
- [112] The Tenant did not attempt to live in this other room to see if the Tenant's heating complaints would be addressed and instead rejected the offer.
- [113] The Tenant did not provide evidence from other tenants of the Residential Property regarding complaints of insufficient heating.
- [114] 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*.
- [115] 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 has sufficient heating.
- [116] In this case the EH has not inspected the Unit and I do not have the benefit of their evidence.
- [117] I note that the Tenant continued to live in the Unit during this period and did not live elsewhere.

[118] I find that there is insufficient evidence to support the Tenant's claim.

**J. Do I have authority (jurisdiction) to determine the Tenant's personal injury claim and related losses?**

[119] On April 29, 2025 the Tenant emailed evidence to the Rental Office. The Tenant included a photograph of the first page of the Application (PDF100) with an additional claim of \$1,000.00 for personal injury and lost wages claiming an allergic reaction to mould in the Residential Property.

[120] In the Tenant's evidence the Tenant also alleges that the Landlord is responsible for the Tenant catching a cold.

[121] I do not have authority (jurisdiction) to adjudicate personal injury claims and related losses. As a result, these compensation claims are dismissed.

**Tenancy Agreement Content**

[122] On April 8, 2023 the *Residential Tenancy Act* replaced the former rental legislation. Landlords are now required to prepare written tenancy agreements containing the information specified in subsection 11(2), which 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.*

[123] The standard form tenancy agreement (*Form 1 – Standard Form of Tenancy Agreement*) is available on the Rental Office's website.

[124] The Tenancy Agreement between the parties includes many clauses which conflict with the *Act*. The Landlord must ensure that all tenancy agreements completed for the Residential Property comply with the *Act*.

**CONCLUSION**

- [125] I find that the Landlord has not returned the Tenant's security deposit, plus interest, in the amount of \$1,018.56.
- [126] The Landlord has established a \$650.00 claim against the Tenant for rent owing, which the Landlord will keep from the security deposit funds.
- [127] The Landlord must return to the Tenant the \$368.56 security deposit balance by the timeline below.
- [128] The other claims in the Landlord Application and the Tenant Application are denied.

**IT IS THEREFORE ORDERED THAT**

1. The Landlord will keep part of the Tenant's security deposit, in the amount of \$650.00.
2. The Landlord will return the security deposit balance, in the amount of \$368.56, by July 24, 2025.

**DATED** at Charlottetown, Prince Edward Island, this 24th day of June, 2025.

(sgd.) Andrew Cudmore

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**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.