

## INTRODUCTION

- [1] This decision determines two applications filed with the Residential Tenancy Office (“Rental Office”) under the *Residential Tenancy Act* (“Act”).
- [2] The Tenant seeks the return of a “non-refundable deposit” (“Deposit”) paid to the Landlord, in the amount of \$400.00.
- [3] The Landlord seeks compensation against the Tenant for damage and cleaning, in the amount of \$800.00.

## DISPOSITION

- [4] The Landlord must return to the Tenant the Deposit, in the amount of \$400.00. The Tenant must compensate the Landlord \$240.00. These amounts offset. The Landlord must pay the Tenant the \$160.00 balance by the timeline below.

## BACKGROUND

- [5] The Unit is a four-bedroom, four-bathroom single-family dwelling, owned by the Landlord.
- [6] On January 28, 2024 the parties signed a *Form 1 – Standard Form of Rental Agreement* (“Tenancy Agreement”). The Tenancy Agreement was a fixed-term for the period of March 1, 2024 to February 28, 2025. The Tenancy Agreement had a typographical error regarding the fixed-term dates. The Tenant paid the Landlord the \$400.00 Deposit to hold the Unit. Rent was \$1,400.00 due on the first day of the month. No security deposit was paid.
- [7] On February 28, 2025 the Tenant vacated the Unit and the tenancy ended.
- [8] On March 17, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (“Tenant Application”) with the Rental Office seeking the return of the Deposit.
- [9] On April 1, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for May 15, 2025.
- [10] On April 29, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (“Landlord Application”) with the Rental Office seeking compensation against the Tenant for damage and cleaning. The Tenant Application and the Landlord Application are collectively referred to as the “Applications.” The Rental Office emailed the parties an updated notice of teleconference hearing with an extended evidence deadline.
- [11] On May 13, 2025 the hearing was adjourned at the Tenant’s request. The Rental Office emailed the parties an updated notice of teleconference hearing, scheduled for May 29, 2025.
- [12] On May 16, 2025 the Rental Office emailed the parties an 86-page PDF evidence package.
- [13] On May 29, 2025 the Tenant, the Landlord and the Landlord’s witness (“LW”) joined the teleconference hearing for determination of the Applications. The parties confirmed receipt of the evidence package and confirmed that all evidence submitted was included.

## ISSUES

- A. Must the Landlord return the Deposit to the Tenant?
- B. Has the Landlord established claims against the Tenant for damage and cleaning?

**ANALYSIS****A. Must the Landlord return the Deposit to the Tenant?**

[14] The evidence establishes that at the start of the tenancy, the parties agreed that the Tenant would pay the Landlord the Deposit to hold the Unit.

[15] Subsections 12(2) and 14(1) of the *Act* state:

12(2) *A landlord shall not accept any deposit except as permitted under section 14.*

14(1) *A landlord may, in accordance with this Act and the regulations, require a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.*

[16] I find that the *Act* prohibits the Landlord from accepting the Deposit for the purpose of holding the Unit for the Tenant. I note that the parties did not dispute that there was an agreement, which is reflected in the Tenancy Agreement.

[17] However, section 5 of the *Act* 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.*

[18] Therefore, I find that despite the parties' agreement, the agreement is void and that the Landlord must return to the Tenant the Deposit, in the amount of \$400.00.

[19] The Tenant Application is allowed.

**B. Has the Landlord established claims against the Tenant for damage and cleaning?**

[20] The Landlord is seeking compensation against the Tenant for damage and cleaning, in the amount of \$800.00.

[21] The Landlord stated that the Unit had a strong cat urine odour and was dirty. The Landlord stated that the yard had a lot of feces from the Tenant's dog, garbage was left behind, and dog hair was all over the Unit. The Landlord stated that an inspection was done at the Unit, however, no inspection report was completed.

[22] The Landlord stated that the Unit was painted six months before the start of the tenancy, and the Tenant was given permission to paint one wall in the Unit.

[23] The Landlord stated that the Tenant would smoke in the Unit, which was not allowed. There were also scratch marks and small holes in the walls that required patching, sanding and painting.

[24] The Landlord stated that the bathroom sink was leaking, which the Tenant had not reported the leak. The Landlord stated that it was costly to repair and place the tap.

[25] LW stated that while the Landlord was ill, she assisted her with the Unit. LW stated that she inspected the Unit at the end of the tenancy. LW stated that when she entered the Unit, there was a strong odour of cat urine and cigarette smoke. LW stated that the Unit required a deep cleaning.

[26] LW stated that she cleaned the Unit over the month of March 2025 for the Landlord. LW stated that she charged the Landlord \$570.00 (\$30.00/hr. multiply by 19 hours).

- [27] LW stated that the heat pump was not cleaned, inside the cupboards were not cleaned, the tub was dirty and the windows had a lot of dirt built up.
- [28] The Tenant stated that he cleaned the Unit before he vacated. The Tenant denied smoking in the Unit and stated that he smoked only in his car. The Tenant stated that he never used the heat pump and did not believe it was his responsibility to clean it.
- [29] The Tenant stated that he did not damage the walls or the floors. The Tenant stated that the Landlord's photograph of a scratched wall was not his damage. The Tenant stated that there was furniture there previously and that he did not move the furniture throughout the tenancy.
- [30] I have reviewed the parties' evidence and I find as followed.
- [31] 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.*
- [32] The parties' provided conflicting evidence about the condition of the Unit at the beginning of the tenancy. Neither party submitted time stamped photographs of the Unit before and after the tenancy. Further, the Landlord did not complete a pre-tenancy and post-tenancy inspection report (*Form 5 – Landlord Condition Inspection Report*) required under clauses 18(3) and 38(3) of the *Act*.
- [33] I find that the Landlord's evidence does not establish a valid claim for damage which is beyond normal wear and tear.
- [34] However, the Landlord's evidence establishes that the Unit was below the standard of reasonably clean. Particularly, the photographic evidence along with the direct testimony of LW satisfy the Landlord's burden of proof on a balance of probabilities.
- [35] The Landlord submitted an invoice for \$570.00 for cleaning. I find that the Tenant is only responsible for the Unit to be reasonably clean and not professional or deep cleaned.
- [36] Based on the evidence, I find that the Landlord has established a valid claim for cleaning in the amount of \$240.00 (\$30.00/ hr. multiply by 8 hours).
- [37] The Landlord Application is allowed, in part.
- [38] Due to the offsets in this Order, the Landlord must compensate the Tenant \$160.00 by the timeline below.

**IT IS THEREFORE ORDERED THAT**

1. The Landlord will pay the Tenant \$160.00 by July 25, 2025.

**DATED** at Charlottetown, Prince Edward Island, this 25th day of June, 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.