INTRODUCTION

[1] This decision determines three applications filed with the Residential Tenancy Office (the "Rental Office") under the *Residential Tenancy Act* (the "*Act*").

[2] The Landlords seek to keep the Tenants' security deposit plus additional compensation for rent owing, electricity, snow removal services, and damages, for a total claim of $2,589.99.

[3] The Tenants seek the return of the security deposit, applicable interest and compensation for furnace oil, in the total amount of $1,016.05.

DISPOSITION

[4] I find that the Landlords have established part of their claims, in the amount of $2,299.50.

[5] The Tenants have established part of their furnace oil claim, in the amount of $364.50. The security deposit, including interest, totals $530.05. This amounts to a total credit of $894.55.

[6] These established claims offset.

[7] The Landlords will keep the Tenants' security deposit, including interest, in the amount of $530.05. The Tenants will pay the Landlords the $1,404.95 balance owing by the timeline below.

BACKGROUND

[8] The Unit is two-bedroom, one-and-a-half-bathroom rental unit.

[9] The Landlords and the Tenants entered into a first written, fixed-term rental agreement for the Unit from May 15, 2022 to May 31, 2023. The Unit's rent was $1,666.00, due on the first day of the month. On April 20, 2022 the Tenants paid the Landlords a $500.00 security deposit.

[10] The Landlords and the Tenants entered into a second written, fixed-term tenancy agreement for the Unit from June 1, 2023 to May 31, 2024. The Unit's rent was $1,666.00, due on the first day of the month.

[11] On April 1, 2024 the Tenants advised the Landlords that the Tenants would be staying in the Unit for another year.

[12] The Landlords and the Tenants entered into a third written, fixed-term tenancy agreement for the Unit from June 1, 2024 to May 31, 2025 (the "Tenancy Agreement"). The Unit's rent was $1,716.00, due on the first day of the month.

[13] On October 29, 2024 the Tenants sent the Landlords a document titled *Tenant's Notice to End the Tenancy N9* (the "Notice") by registered mail.

[14] Around November 30, 2024 the Tenants moved out of the Unit.

[15] On December 13, 2024 the Landlords filed with the Rental Office a first *Form 2(B) Landlord Application to Determine Dispute* (the "First Landlord Application") seeking to retain the Tenants' security deposit for damages and rent owing.

[16] On March 21, 2025 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office seeking the return of the $500.00 security deposit, applicable interest ($30.05) and compensation for furnace oil in the amount of $486.00. On this date the Tenants sent the Tenant Application to the Landlords by registered mail.

[17] On April 1, 2025 the Landlords filed with the Rental Office a second *Form 2(B) Landlord Application to Determine Dispute* (the "Second Landlord Application") seeking compensation for rent owing and services. On this date the Landlords sent the First Landlord Application and the Second Landlord Application to the Tenants by registered mail.

[18] On April 10, 2025 the Rental Office sent the parties notice of a teleconference hearing scheduled for May 27, 2025, along with copies of the three applications.

[19] On May 23, 2025 the Rental Office sent the parties a revised notice of hearing and a 202-page evidence package (the "Evidence Package" or "EP").

[20] On May 27, 2025 the Tenants and one of the Landlords (the "Landlord") joined the teleconference hearing. The hearing was adjourned because the Landlords' copy of the Evidence Package had 17 blank pages. On this date the Rental Office sent the parties notice of an adjourned teleconference hearing scheduled for June 6, 2025 along with the 17 pages of evidence.

[21] On June 6, 2025 the Tenants and the Landlord joined the teleconference hearing. The parties confirmed receipt of the 202 pages of documentary evidence. The parties were not aware of any missing documents that had previously been submitted to the Rental Office.

ISSUES

A. Do the Tenants owe rent to the Landlords?

B. Must the Tenants compensate the Landlords for electricity and snow removal costs?

C. Must the Tenants compensate the Landlords for damage?

D. Must the Landlords compensate the Tenants for furnace oil?

E. Did the Landlords comply with section 40 of the *Act*?

ANALYSIS

A. Do the Tenants owe rent to the Landlords?

[22] For the reasons below I find that the Tenants owe the Landlords rent for December 2024.

Tenants' Notice

[23] The Tenants sent their Notice to the Landlords by registered mail on October 29, 2024.

[24] The Landlord was unsure of the exact date that he viewed the Notice. The Landlord provided an estimated date range from around November 10 to 15, 2024.

[25] I note that the Notice was deemed to have been served on the Landlords effective November 1, 2024 under subsection 100(4) of the *Act*, being the third day after mailing.

[26] The Notice (EP142) is based upon a tenant termination notice form from another jurisdiction.

[27] Section 53 of the *Act* states the required contents of an eviction notice:

> *In order to be effective, a notice of termination shall be in writing and shall*
> *(a) be signed and dated by the landlord or tenant giving the notice;*
> *(b) give the address of the rental unit;*
> *(c) state the effective date of the notice;*

> *(d) except for a notice of termination under section 56, state the grounds for ending the tenancy;*
> *(e) be given to the other party in accordance with section 100; and*
> *(f) when given by a landlord, be in the approved form.*

[28] The Notice contains the required content for a tenant notice under section 53. I note that the grounds for ending the tenancy do not specify a basis contained in section 57 of the *Act*.

[29] I also note that the Notice's effective date is incorrect.

[30] The timeline for ending a fixed-term tenancy by notice is specified in subsection 55(3):

> *A tenant may end a fixed-term 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;*
> > *(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and*
> > *(c) is the day before the day that rent is payable under the tenancy agreement.*

[31] The effective date cannot be earlier than the date specified in the Tenancy Agreement as the end date of the tenancy. Therefore, the Notice could not be effective until May 31, 2025.

[32] The effective date in the Notice is automatically corrected under section 54 of the *Act*.

[33] I note that, even if the parties had a month-to-month tenancy, the service of an eviction notice on November 1, 2024 would only terminate a tenancy agreement effective December 31, 2024.

[34] Rent was due on the first day of the month and notice for a month-to-month tenancy must be served at least the day before rent is due (by October 31, 2024). One full month's notice must also be provided (subsection 55(2)). There are similar rules for ending a tenancy under section 57 (see subsection 57(2)).

[35] Therefore, even if the Tenancy Agreement was month-to-month or ended under section 57, service of the Notice on November 1, 2024 would only end the Tenancy Agreement effective December 31, 2024.

[36] For these reasons, the Notice did not stop the Tenants from being responsible for December 2024 rent.

Mitigation

[37] The Landlords had a duty to mitigate (reduce) rental income losses.

[38] I note that the Tenants were potentially responsible to the Landlords for rent for the period of December 1, 2024 to May 31, 2025 in the amount of $10,296.00.

[39] The Landlords re-rented the Unit effective January 1, 2025 and thereby reduced their rent owing claim from $10,296.00 to $1,716.00, being 16.7% of the total possible rent claim for the balance of the fixed-term after the Tenants vacated the Unit and stopped paying rent.

[40] I accept the Landlords' evidence that the time of year that the Tenants vacated the Unit was comparatively a more challenging time to find suitable replacement tenants.

[41] The Landlords had detailed criteria for selecting replacement tenants. However, upon review of the mitigation evidence provided by the Landlords, I am satisfied that the Landlords engaged in sufficient mitigation efforts to attempt to re-rent the Unit.

[42] For these reasons, the Landlords have a valid claim against the Tenants for December 2024 rent, in the amount of $1,716.00.

[43] The Tenancy Agreement is terminated effective December 31, 2024.

B. Must the Tenants compensate the Landlords for electricity and snow removal costs?

Electricity

[44] Clause 4 of the Tenancy Agreement states that electricity is an excluded service, which is therefore the Tenants' responsibility.

[45] The Landlords paid the Unit's December 2024 electricity costs after the Tenants vacated and before the Tenancy Agreement ended.

[46] The Landlords submitted into evidence Maritime Electric statements showing that they paid the following amounts:

- $82.01 from December 2 to 9, 2024; and
- $105.24 prorated amount from December 9 to 31, 2024

[47] The evidence establishes that the Landlords have a valid claim against the Tenants for December 2024 electricity costs, in the total amount of $187.25.

Snow Removal

[48] Clause 4 states that snow removal is an excluded service, which is therefore the Tenants' responsibility.

[49] The Landlords paid $258.75 for the Unit's snow removal services for the 2024/2025 season.

[50] Typically, service costs would be pro-rated to the end date of a tenancy agreement. However, the Landlords' evidence is that the new tenant was not charged for snow removal because this cost was already paid and the Landlords were trying to get a good tenant.

[51] As noted above, the Landlords mitigated their rental income losses from $10,296.00 to $1,716.00.

[52] Based upon the evidence presented, I find that the snow removal cost was incurred as part of the Landlords' efforts to mitigate rental income losses.

[53] The Landlords have a valid claim against the Tenants for snow removal, in the amount of $258.75.

C. Must the Tenants compensate the Landlords for damage?

[54] I note that sections 18 and 38 of the *Act* regarding move-in and move-out inspections did not apply to the Landlords and the Tenants because the Tenants started renting the Unit from the Landlords before the *Act* came into force (see section 109).

[55] The parties signed a pre-existing damages document dated May 15, 2022 (EP63).

[56] The best practice is to date-stamp photographs, as completed by the Landlords. Although the Tenants' photographs are not date stamped I am satisfied that the photographs were taken by the Tenants near the end of November 2024.

[57] The Landlords' photographs are mainly close-up photographs showing specific, damaged areas of the Unit.

[58] The Tenants' photographs generally show larger parts of the Unit in a clean and undamaged condition.

[59] Clause 39(2)(a) of the *Act* provides the rules regarding the condition of a rental unit at the end of a tenancy. This clause 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…*

[60] The Landlords provided detailed evidence and submissions arguing that the Tenants are responsible for damage to the Unit.

[61] However, most of the damage shown in the Landlords' evidence is reasonable wear and tear commensurate with a tenancy lasting about two-and-a-half years. I note that clause 39(2)(a) of the *Act* supersedes clauses in the Tenancy Agreement that would effectively make the Tenants responsible for reasonable wear and tear.

[62] The Landlords' deck door Velcro removal, concrete paver stones removal and hanging bracket removal are not reasonable wear and tear and the Tenants are responsible for these costs, in the amount of $137.50 (5.5 hours multiplied by $25.00 per hour).

D. Must the Landlords compensate the Tenants for furnace oil?

[63] The Tenants seek compensation from the Landlords for furnace oil left in the Unit's tank, in the amount of $486.00 (450 litres multiplied by $1.08 per litre).

[64] The Tenants stated that in the Fall of 2024 they had the furnace oil tank filled because they were planning on staying for the Winter. The Tenants stated that the tank was filled with over 900 litres and they believe the entire tank capacity is 1,000 litres. The Tenants stated that they did not use any furnace oil after the tank was last filled.

[65] The Tenants submitted into evidence photographs of the furnace oil tank (EP192).

[66] The Landlords dispute the furnace oil claim. The Landlords argue that they do not want furnace oil in the Unit and they are trying to get rid of oil from their property. The Landlords argue that the Tenants should come and pump out any excess oil if they want it. The furnace oil tank is 900 litres, not 1,000 litres.

[67] The Landlords submitted into evidence photographs of the furnace oil tank taken on December 2, 2024 (EP113 and 114).

[68] Clause 35 of the Tenancy Agreement states in part:

> *"Oil tank was at ½ guage mark upon start of original lease agreement. Lessee to add oil to ½ gauge mark upon lease termination and lessee vacating building."*

[69] I find that the Landlords must compensate the Tenants for the excess furnace oil in the tank. From clause 35 of the Tenancy Agreement it is implicit that the oil has value because there is the

requirement to fill the tank to half full upon vacating. The oil also provides an additional method of heating the Unit in the event of an electricity outage. The Landlords' proposal to have the Tenants remove the excess furnace oil is not a suitable solution.

[70] The evidence does not establish that the furnace oil tank capacity was larger than 900 litres or that the tank was filled more than 87.5% (7/8) full. The evidence presented establishes that the Tenants left the tank 37.5% fuller than the beginning of the tenancy.

[71] The Tenants have established a claim for $364.50 (37.5% of 900 litres multiplied by $1.08 per litre).

E. Did the Landlords comply with section 40 of the *Act*?

[72] Based upon the evidence presented, I find that the Landlords complied with section 40.

[73] The Landlords filed the First Landlord Application on December 13, 2024, shortly after the Tenants vacated the Unit and before the tenancy ended on December 31, 2024.

[74] Based upon the evidence presented, I am not satisfied that the Landlords had an address for service in December 2024 within the meaning of subsection 100(1) of the *Act*. The Landlords also provided evidence regarding inquiries they made to the Rental Office regarding service of the First Landlord Application (EP22). The evidence presented also indicates that the Tenants did not want to provide an address for service until they filed the Tenant Application. In the specific circumstances of this case, I find that the Landlords have complied with section 40.

[75] I note that, generally speaking, subsection 40(1) of the *Act* poses challenges because there are circumstances where landlords are required to file applications with the Rental Office to retain security deposits regardless of whether or not the landlords have a valid address for service.

[76] Earlier drafts of the *Residential Tenancy Act* addressed this problem by having a second timeline for landlords to file with the Rental Office.

[77] Subsection 41(1) of the publically available 2019 *Residential Tenancy Act* Consultation Draft stated:

> *Except as provided in subsection (2) or (3), within 15 days after* ***the later of***
> *(a) the date the tenancy ends or is assigned; and*
> ***(b) the date the landlord receives the tenant's forwarding address in writing;***
> *the landlord shall either*
> *(c) repay, as provided in subsection (5), any security deposit to the tenant with interest calculated in accordance with the regulations; or*
> *(d) make an application to the Director under section 78 claiming against the security deposit.*
>
> [Emphasis added.]

[78] This second timeline was later removed and did not become part of the *Act*.

[79] The Tenants' $500.00 security deposit, plus applicable interest of $30.05, is deducted from the Landlords' established claims, as calculated below.

CONCLUSION

[80] The Landlords will keep the Tenants' security deposit, including interest, in the amount of $530.05.

[81] The Tenants must also pay the Landlords the net amount of $1,404.95 by the timeline below, calculated as follows:

Item	Amount
Rent owing for December 2024	$1,716.00
Electricity costs	$187.25
Snow removal costs	$258.75
Damage	$137.50
Furnace oil	-$364.50
Security deposit	-$500.00
Interest (20 APR 2022 to 3 JUL 2025)	-$30.05
Balance owing	$1,404.95

IT IS THEREFORE ORDERED THAT

1. The Landlords will keep the Tenants' security deposit, including interest, in the amount of $530.05.

2. The Tenants must also pay the Landlords $1,404.95 by September 3, 2025.

DATED at Charlottetown, Prince Edward Island, this 3rd day of July, 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.