

## 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 Landlord seeks to keep the Tenant’s security deposit plus additional compensation for rent owing, for a total claim of \$2,520.00.
- [3] The Tenant seeks a return of the security deposit.

## DISPOSITION

- [4] I find that the Landlord has established a \$1,270.00 claim for rent owing. The Landlord’s additional compensation claim is denied.
- [5] The Landlord will keep the security deposit, plus the Tenant’s additional payment of \$20.00.
- [6] The Landlord will return the accrued interest of \$13.44 to the Tenant.
- [7] The Tenant’s claim is denied.

## BACKGROUND

- [8] The Unit is a room with shared common spaces in a three-bedroom house (the “Residential Property”) that the Landlord owns.
- [9] On May 12, 2025, the parties entered into a written fixed-term tenancy agreement for the Unit, effective from June 1, 2025, to May 30, 2026. Rent of \$1,270.00 was due on the first day of the month, and a security deposit of \$1,250.00 was paid on May 12, 2025.
- [10] The Tenant did not move into the Unit.
- [11] On June 18, 2025, the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the “Tenant Application”) with the Rental Office seeking the return of the security deposit.
- [12] On June 20, 2025, the Landlord filed a first *Form 2(B) Landlord Application to Determine Dispute* with the Rental Office seeking to keep the security deposit (the “First Landlord Application”).
- [13] On June 20, 2025, the Landlord filed a second *Form 2(B) Landlord Application to Determine Dispute* with the Rental Office seeking additional compensation of \$2,500.00 (the “Second Landlord Application”).
- [14] The Landlord’s two applications will be collectively referred to as the “Landlord Applications.”
- [15] On July 16, 2025, the Rental Office sent the parties notice of a teleconference hearing scheduled for August 26, 2025.
- [16] On August 6, 2025, the Rental Office sent the parties notice of a rescheduled teleconference hearing for September 23, 2025.
- [17] On September 16, 2025, the Rental Office sent the parties a 59-page PDF evidence package.
- [18] On September 23, 2025, the Landlord and the Tenant participated in a teleconference hearing. The parties confirmed that all the evidence submitted to the Rental Office was included in the evidence package. Following the hearing, both parties submitted additional evidence.

**ISSUES**

- A. Can the Landlord automatically keep the security deposit?
- B. Can the Landlord keep the security deposit for rent owing?

**EVIDENCE****Landlord's evidence and submissions**

- [19] The Landlord stated that he is seeking to retain the security deposit of \$1,250.00 due to a breach of the tenancy agreement. He is also seeking rent owed for June 2025. He stated that the Landlord Applications indicated that he was seeking additional compensation of \$2,500.00 for rent owed, but that included anticipated rent for July 2025. He stated that he re-rented the Unit for July 1, 2025, and he is only seeking the rent owed of \$1,270.00 for June.
- [20] The Landlord stated that the Tenant signed the tenancy agreement on May 12, 2025, and sent the Landlord a security deposit of \$1,270.00 on the same date. On May 24, 2025, the Tenant and his family visited the Residential Property for the first time and confirmed their satisfaction with the Unit. However, on May 26, 2025, the Tenant informed the Landlord in person that he would not be moving into the Unit.
- [21] The Landlord stated that the Tenant expressed concern about the shared bathroom facilities, as they would be an issue for the Tenant's young son. The Landlord stated that the Tenant's claim that a shared bathroom is "problematic" for his family is a personal preference, and not a legal basis for voiding the tenancy agreement. He stated that the Tenant had full awareness of the setup, visited the property, and proceeded with the agreement. He also provided a copy of the Unit's advertisement, which explained the shared facilities.
- [22] The Landlord stated that the tenancy agreement states that if the Tenant does not pay June's rent within the first 5 days and does not move in, then the security deposit is forfeited, and the Landlord has the right to re-rent the Unit. He stated that he is seeking to retain the security deposit due to this breach of the tenancy agreement.
- [23] The Landlord stated that the first written notice he received indicating that the Tenant would not be moving into the Unit was the June 18, 2025, Tenant Application. He stated he filed the Landlord Applications on June 20, 2025, as a result of the Tenant Application. He then advertised the Unit and re-rented it for July 1, 2025.

**Tenant's evidence and submissions**

- [24] The Tenant stated that when he signed the tenancy agreement and sent the security deposit, he mistakenly sent \$1,270.00 instead of the required \$1,250.00. He stated he has asked for a return of the \$20.00 overpayment, but he has not received it back from the Landlord.
- [25] The Tenant stated that he and his family were living outside of PEI when he signed the tenancy agreement. They arrived in PEI on May 22, 2025 and temporarily stayed in a different shared house with other tenants while waiting to move into the Unit. When staying in the shared house, the Tenant and his family had limited access to that bathroom, which proved to be challenging for his young son. The Tenant and his family were also unable to use the dining table and could not use any cookware due to the presence of other tenants.
- [26] The Tenant stated that on May 24, 2025, he and his family viewed the Residential Property. He stated that on May 26, 2025, he told the Landlord that he would not be moving into the Unit. He stated that the living conditions in the shared house made the Tenant uncomfortable and were a significant factor in his decision not to proceed with renting the Unit.

- [27] The Tenant stated that the Landlord did not agree to the Tenant's request, stating that the Tenant could not cancel the tenancy agreement. The Tenant did not move into the Unit and found another place to live beginning June 1, 2025. The Tenant stated that he informed the Landlord in good faith that he did not want to move into the Unit, and he is seeking a return of the security deposit.

## ANALYSIS

### A. Can the Landlord automatically keep the security deposit?

- [28] The Landlord stated that he was seeking to automatically keep the security deposit due to a clause in the tenancy agreement which states: "*After paying deposit, Party B has no show to move in & does not pay the June rent in the first 5 days of June, Party B lose the deposit, A is allowed to unilaterally terminate the contract and lease the room out to other tenants.*"

- [29] Clause 15(c) of the Act states:

*A landlord shall not*

*(c) 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.*

- [30] 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.*

- [31] I note that including a clause that automatically allows a landlord to retain a security deposit at the end of the tenancy is contrary to clause 15(c) of the Act. Furthermore, a tenant cannot waive or release this right, as stated by section 5 of the Act. As such, this clause is void and of no effect.

- [32] Therefore, I find that the Landlord cannot automatically keep the security deposit.

### B. Can the Landlord keep the security deposit for rent owing?

- [33] The parties agreed that the Tenant informed the Landlord on May 26, 2025, that he and his family would not be moving into the Unit on June 1, 2025. Subsection 55(3) of the Act states:

*(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.*

- [34] Despite the Tenant stating that the Unit was not a suitable setup for his family, it was the Tenant's responsibility to ensure the Unit was suitable before signing the tenancy agreement. Once the tenancy agreement was signed, the parties had entered into a landlord/tenant relationship under the Act. Therefore, subsection 55(3) applies with regard to the Tenant providing proper notice to end the fixed-term tenancy agreement.

- [35] I find that the evidence establishes that the Tenant did not provide the Landlord proper notice to end the fixed-term tenancy agreement.

- [36] I further find that the Landlord had fulfilled their responsibility to try to mitigate rental income losses after they regained possession of the Unit, under section 46 of the Act. The Landlord advertised the Unit and re-rented it for July 1, 2025. Therefore, the tenancy between the Landlord and Tenant ended on June 30, 2025.
- [37] I find that the Landlord has established that the Tenant owes the Landlord \$1,270.00 in rent for June 2025, and the Landlord will keep the \$1,250.00 security deposit. I also find that the Landlord will retain the Tenant's additional payment of \$20.00, which I consider to be a partial payment of June's rent, rather than an overpayment of the security deposit.
- [38] The Landlord will return the interest accrued on the \$1,250.00 security deposit to the Tenant by the timeline below.

### **Tenancy Agreement – Proper Form**

- [39] I note that the tenancy agreement is not on the proper Form. The tenancy agreement is also missing some required information, such as the previous rent charged for the former tenant, which is mandatory under the Act. This information must be included in every written tenancy agreement. The tenancy agreement also includes clauses which are contrary to the Act.
- [40] Subsections 11(1) and (2) of the Act require the tenancy agreement to be in writing and have the formal requirements listed in subsection 11(2) of the Act. The Rental Office's *Form 1 – Standard Form of Tenancy Agreement* can be found on the Rental Office's website.

### **CONCLUSION**

- [41] I find that the Landlord has established a \$1,270.00 claim for rent owing. The Landlord's additional compensation claim is denied.
- [42] The Landlord will keep the security deposit, plus the Tenant's additional payment of \$20.00.
- [43] The Landlord will return the accrued interest of \$13.44 to the Tenant.
- [44] The Tenant's claim is denied.

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

1. The Landlord will keep the security deposit of \$1,250.00, plus the Tenant's additional payment of \$20.00.
2. The Landlord will return the interest accrued on the security deposit of \$13.44 by November 14, 2025.

**DATED** at Charlottetown, Prince Edward Island, this 16th day of October, 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.