

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 dispute the date that the tenancy ended.
- [3] The parties dispute whether the Landlord should keep the security deposit or return it to the Tenants. The parties dispute whether there was an agreement for the Landlord to keep the security deposit. The parties dispute whether the Landlord complied with rules regarding security deposits under section 40 of the *Act*.
- [4] The Landlord also seeks additional compensation for cleaning and damage.

DISPOSITION

- [5] I find that the tenancy ended on June 15, 2025.
- [6] The Landlord must pay the Tenants double the security deposit balance plus interest in the total amount of \$2,710.08 by the timeline below. The evidence presented does not establish an agreement for the Landlord to keep the security deposit. The Landlord did not comply with section 40 of the *Act*. The evidence establishes a \$300.00 security deposit deduction for kitchen countertop damage.
- [7] The Landlord's other cleaning and damage claims are denied.

BACKGROUND

- [8] The Unit is a two-bedroom, one-bathroom rental unit located in a duplex that the Landlord has owned for over nine years.
- [9] The Landlord and the Tenants entered into a written, fixed-term tenancy agreement from November 1, 2022 to October 31, 2023 (the “Tenancy Agreement”). The agreement then continued on a month-to-month basis. A security deposit of \$1,600.00 was paid on October 6, 2022. Rent in the amount of \$1,600.00 was due on the first day of the month.
- [10] On May 15, 2025 the Tenants text-messaged the Landlord stating that the Tenants would move out of the Unit on June 15, 2025.
- [11] On June 15, 2025 the Tenants moved out of the Unit and on June 16, 2025 the Tenants returned the Unit's keys.
- [12] On July 17, 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 security deposit.
- [13] On September 17, 2025 the Rental Office sent the parties notice of a teleconference hearing scheduled for October 30, 2025.
- [14] On October 21, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the “Landlord Application”) with the Rental Office seeking to keep the Tenants' security deposit and additional compensation.
- [15] On October 21, 2025 the Rental Office sent the parties a 30-page evidence package.
- [16] On October 29, 2025 the Tenants emailed the Landlord and the Rental Office two additional pages of evidence.

- [17] On October 30, 2025 the Tenants and the Landlord participated in a teleconference hearing. The parties confirmed that they received the evidence package and the additional evidence. The parties confirmed that all evidence submitted to the Rental Office was included.

ISSUES

- A. What date did the tenancy end?
- B. Must the Landlord pay the Tenants double the security deposit plus interest?
- C. Has the Landlord established compensation claims for cleaning and damage?

ANALYSIS

A. What date did the tenancy end?

- [18] A tenant termination notice for a month-to-month term served on May 15, 2025 would normally end a tenancy on June 30, 2025.

- [19] Subsection 55(2) states:

A tenant may end a month-to-month or other periodic 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;
and

(b) is the day before the day that rent is payable under the tenancy agreement.

- [20] Essentially, a tenant must provide at least one full month's notice and the tenancy will end the day before the rent due date.

- [21] In this case rent is due on the first day of the month. Therefore, the Tenants' notice on May 15, 2025 would not normally terminate the tenancy until June 30, 2025, the day before the rent due date of July 1, 2025.

- [22] However, a landlord can waive their right to the minimum notice period in subsection 55(2). Section 5 of the Act only protects tenants' rights, stating as follows:

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.

- [23] Based upon the evidence presented, particularly the correspondence between the parties, I find that the Landlord waived their right to the length of notice provided by subsection 55(2).

- [24] In mid-May of 2025 the parties had the following text-message correspondence:

Tenants – May 15, 2025

"...An opportunity to move into a 3-bedroom duplex in [location] fell into our laps this week. We hope to eventually buy in that area in a few years so starting [child] off in that school district next September for kindergarten would make things very easy! It has a big yard too. It's a new build, almost ready and he wants someone for June 1st but I told him I need to give you at least a month's notice. I pushed for July 1st but he's eager to get us in there by mid-June, so it looks like we'll be moving for June 15th. We've loved living here, it's suited our needs so well and you've been so lovely, but this opportunity feels like the right forward step for us!"

Landlord – May 16, 2025

“That’s so exciting for you guys! I very much appreciate providing me the month’s notice. I’m so glad you guys enjoyed your time at [street name]. It’s been a pleasure having you guy as tenants.”

[25] Based upon this correspondence, it appears that the Landlord accepted the Tenants’ notice to end the Tenancy Agreement effective June 15, 2025. In particular, the Landlord’s comment *“I very much appreciate providing me the month’s notice”* waived the Landlord’s right to insist that the tenancy would end on June 30, 2025.

[26] This finding of waiver is also consistent with the Landlord’s email to the Tenants on July 4, 2025, which stated in part:

“...I didn’t say anything at the time but 1 months notice should be made from the 1st of the month as you cant rent an apartment in the middle of the month. I didn’t push that as I knew I needed time to do the floor so I accepted half months rent. Its been a very big scramble for me to get the place back to rentable status for the new tenants coming in. There also didn’t appear to be adequate cleaning done.

I’m sorry if you were expecting a portion of your deposit back...”

[27] I find that the Tenancy Agreement ended on June 15, 2025.

[28] It appears that the Landlord regrets permitting the Tenants to end the Tenancy Agreement early. However, the Landlord already waived the right to collect rent to the end of June 2025.

B. Must the Landlord pay the Tenants double the security deposit?

[29] Section 40 of the Act addresses the retention and return of a security deposit, stating in part as follows:

(1) Except as provided in subsection (2) or (3), within 15 days after the date the tenancy ends or is assigned, the landlord shall either

- (a) issue payment, as provided in subsection (5), of any security deposit to the tenant with interest calculated in accordance with the regulations; or*
- (b) make an application to the Director under section 75 claiming against the security deposit.*

(2) A landlord may retain from a security deposit an amount that

- (a) the Director has previously ordered the tenant to pay to the landlord; and*
- (b) remains unpaid at the end of the tenancy.*

(3) A landlord may retain an amount from a security deposit if

- (a) at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
- (b) after the end of the tenancy, the Director orders that the landlord may retain the amount.*

(4) Where a landlord does not comply with this section, the landlord

- (a) shall not make a claim against the security deposit; and*
- (b) shall pay the tenant double the amount of the security deposit.*

[30] Based upon the evidence presented, I find that the Landlord did not comply with section 40 of the Act.

[31] The parties disputed whether there was an agreement for the Landlord to keep the security deposit.

- [32] The Landlord argued that the Tenants agreed to the Landlord keeping the security deposit. In particular, on May 26, 2025 the Tenants sent the Landlord photographs of a kitchen countertop burn marks and the parties had the following exchange:

Tenants

"There is also this burn mark in the countertop that happened a couple months ago by accident. We understand that this will come out of our deposit. Let me know if you need measurements to replace it."

Landlord

"Okay thanks for letting me know. I'll get those measurements when I'm there then as well."

- [33] At the hearing the Landlord stated that, when the Landlord received the Tenants' text-message, the Landlord thought it was an agreement to keep the security deposit.

- [34] At the hearing the Landlord also stated:

"... looking back now at the text I think I read it too quickly and, and assumed that that was, you know, that they were aware that the damage deposit in entirety was being kept. Um, in which case then when she came back looking for the remainder of the damage deposit I explained to her in detail why it won't be returned. And that was after the fact I had to, um, I, I did the inspection on the apartment and had to spend a lot of time, ah, getting it ready for the new tenant."

- [35] The evidence does not establish an agreement that the Landlord could keep the entire security deposit for countertop damage.

- [36] A fundamental part of any agreement would be a meeting of the minds regarding the amount of the security deposit that was being kept by the Landlord or a method for determining the amount that would be kept. Upon review of the correspondence, I do not see an agreement.

- [37] When the Tenants stated that the countertop cost will come out of the security deposit, this does not mean that the Landlord will keep the entire security deposit. The countertop photographs show minor cosmetic damage that does not prevent the countertop from being used. The Landlord re-rented the Unit and had a new tenant move in on August 1, 2025 without repairing the damage.

- [38] The countertop damage is not of such a degree that it could reasonably be expected to cost the entire security deposit amount of \$1,600.00 plus interest.

- [39] The evidence does not establish an agreement for the Landlord to keep the security deposit under clause 40(3)(a).

- [40] However, the evidence does establish that the Tenants generally agreed to a security deposit deduction for the countertop damage, which I will determine under clause 40(3)(b). I note that a similar determination was made by the Island Regulatory and Appeals Commission (the "Commission") in Order LR25-48 (paragraph 29).

- [41] The issue in this case is the appropriate amount of the deduction.

- [42] Based upon the evidence presented, I find that a \$300.00 deduction is supported.

- [43] The Landlord estimated that the countertop replacement cost would be \$600.00 to \$800.00 plus tax. The Landlord did not provide an estimate from a third-party contractor or business regarding

the materials or labour cost. The Landlord does not have an exact cost as the work has not been completed yet.

- [44] The Tenants provided better evidence regarding the countertop repair cost. The Tenants submitted into evidence an estimate from Kent Building Supplies regarding a kitchen countertop materials cost of \$139.12. The Tenants stated that they had expected a \$200.00 to \$300.00 deduction.
- [45] I note that the Landlord re-rented the Unit effective August 1, 2025. Therefore, the Landlord was able to re-rent the Unit despite the countertop damage.
- [46] Further, I note that a replacement countertop would be in newer condition compared to the damaged countertop. A \$300.00 deduction also makes allowance for the betterment principle regarding the newer condition of the replacement countertop. The Commission provided a detailed analysis regarding the betterment principle in Orders LR24-06 and LR25-25.
- [47] The Landlord was required to comply with subsection 40(1). The Landlord did not return the security deposit balance to the Tenants or file an application with the Rental Office to keep the security deposit by June 30, 2025, being 15 days after the tenancy ended.
- [48] Further, the Tenants' July 3, 2025 email to the Landlord regarding the security deposit and the filing of the Tenant Application on July 17, 2025 should have made it clear to the Landlord that the Tenants disputed the Landlord keeping the entire security deposit. However, the Landlord also did not file an application within 15 days of these dates.
- [49] There are no earlier Rental Office decisions authorizing the Landlord to keep the security deposit under subsection 40(2).
- [50] As a result, the Landlord must pay the Tenants double the security deposit balance (\$1,300.00) in accordance with subsection 40(4), in the amount of \$2,600.00, plus interest on the original security deposit, in the amount of \$110.08.
- [51] The Tenants have established a claim against the Landlord totaling \$2,710.08.

C. Has the Landlord established compensation claims for cleaning and damage?

- [52] The Landlord has the burden to prove, on a balance of probabilities, that the Tenants left the Unit in a condition worse than reasonably clean and caused damage beyond reasonable wear and tear.
- [53] 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...*

- [54] For the reasons below, I find that the Landlord has not established these claims.
- [55] The parties provided limited objective evidence of the Unit's condition at the beginning and end of the tenancy.
- [56] The Tenants provided a photograph dated June 16, 2025 showing a small portion of the Unit. The photograph shows part of the Unit reasonably clean and without damage beyond reasonable wear and tear.
- [57] The Landlord provided reasons why they did not have photographs of the Unit.

- [58] Regardless of the reasons, I am left with limited objective evidence showing the alleged unclean and damaged areas, except for the kitchen countertop damage determined above.
- [59] I note that for tenancies that started on or after April 8, 2023, written move-in and move-out inspection reports are mandatory under sections 18 and 38.
- [60] The tenancy between the Landlord and the Tenants started on November 1, 2022. Therefore, the parties were exempted from the inspection requirements under section 109, which states as follows:

Sections 18 and 38 of this Act do not apply to a landlord or tenant in respect of a tenancy that started before the date this Act comes into force.

- [61] However, under the former rental legislation the Rental Office made available a condition inspection form for landlords and tenants to complete. Although voluntary, the best practice was to complete this form at the beginning and end of the tenancy to document the rental unit's baseline and final condition.
- [62] In this case I have not been provided with an inspection report.
- [63] The Landlord stated that there are witnesses who could support the Landlord's claims.
- [64] I note that an *Evidence Information Sheet* was sent to the parties on September 17, 2025 with the notice of hearing. This sheet provides the following instructions:

"It is the party's responsibility to provide the hearing conference call information to their witness. The Rental Office will not contact the witness."

- [65] It is the responsibility of landlords and tenants to have their witness attend hearings. It is not the Rental Office's responsibility to seek out or track down witnesses.
- [66] The Landlord did not have witnesses participate in the hearing and I do not have the benefit of their evidence.
- [67] The Landlord stated that the Tenants did not notify the Landlord of a bathroom water leak which caused damage. The Tenants denied knowing about this water leak. The Tenants denied responsibility for the Landlord's other financial claims.
- [68] During the hearing the Landlord alleged that the Tenants were being dishonest.
- [69] I note that on or about May 26, 2025 the Tenants voluntarily admitted to the Landlord that they were responsible for damaging the kitchen countertop. The Tenants maintained this admission during the teleconference hearing.
- [70] The Tenants' admission was against their financial interests and enhances the Tenants' credibility.
- [71] The Landlord has provided insufficient evidence to support the allegations that the Tenants have been dishonest.
- [72] I find that the Landlord has provided insufficient evidence to support cleaning and damage claims except for the kitchen countertop, which has already been determined above.

Mandatory Tenancy Agreement Information

[73] The Tenancy Agreement commenced on November 1, 2022, before the *Residential Tenancy Act* came into force on April 8, 2023. I note that for tenancy agreements commencing on or after April 8, 2023 landlords are required to prepare written tenancy agreements in accordance with sections 10 and 11 of the *Act*.

[74] In particular, subsection 11(2) 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.*

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

CONCLUSION

[76] The tenancy between the parties ended on June 15, 2025.

[77] The evidence presented establishes a \$300.00 deduction for kitchen countertop damage. The Landlord will pay the Tenants double the security deposit balance plus interest in the total amount of \$2,710.08 by the timeline below. The Landlord's other cleaning and damage claims are denied.

IT IS THEREFORE ORDERED THAT

1. The Landlord will pay the Tenants \$2,710.08 by December 8, 2025.

DATED at Charlottetown, Prince Edward Island, this 7th day of November, 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.