

INTRODUCTION

- [1] This decision determines an application filed with the Residential Tenancy Office (the "Rental Office") under the *Residential Tenancy Act* (the "Act").
- [2] The Tenants claim against the Landlord for the return of their security deposit and part of December 2025 rent.

DISPOSITION

- [3] The Tenants have established a security deposit compensation claim of \$2,412.26 regarding non-compliance with section 40. The Tenants are also credited \$1,200.00 for the partial payment of December 2025 rent.
- [4] The Landlord has established a lost rental income claim of \$2,000.00.
- [5] The Landlord will pay the Tenants the net amount of \$1,612.26 by the timeline below.

BACKGROUND

- [6] The Unit is a one-bedroom, one-bathroom condo unit located in a five-unit building. In 1991 the Landlord purchased the building and in 2018 the Landlord converted the building to condos. The Landlord sold the building's other units and the Landlord ordinarily lives in the Unit.
- [7] The Landlord and the Tenants entered into a written, fixed-term tenancy agreement from December 1, 2025 to April 30, 2026 (the "Tenancy Agreement"). On September 20, 2025 the Tenants paid a \$1,200.00 security deposit. Rent in the amount of \$2,400.00 was due on the first day of the month. The first time that the Landlord rented the Unit was under the Tenancy Agreement.
- [8] On October 27, 2025 the Tenants emailed the Landlord informing that they would not be moving into the Unit (the "Notice").
- [9] On October 29, 2025 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* with the Rental Office for the return of their security deposit and the \$1,200.00 the Tenants had also paid for December's rent (the "Application").
- [10] On December 11, 2025 the Rental Office sent the parties notice of a teleconference hearing scheduled for February 10, 2026.
- [11] On January 21, 2026 the Rental Office sent the parties updated notice of a teleconference hearing scheduled for February 10, 2026.
- [12] On January 30, 2026 the Rental Office sent the parties a 34-page evidence package.
- [13] On February 4, 2026 the Rental Office provided the parties with additional Landlord evidence.
- [14] On February 10, 2026 the parties participated in a teleconference hearing. The parties confirmed receipt of the evidence package and the additional evidence. The parties confirmed that all evidence submitted to the Rental Office was included.

ISSUES

- A. Must the Landlord return to the Tenants part of December 2025 rent? Must the Tenants compensate the Landlord for lost rental income?
- B. Must the Landlord compensate the Tenants double the security deposit balance?

ANALYSIS**A. Must the Landlord return to the Tenants part of December 2025 rent? Must the Tenants compensate the Landlord for lost rental income?**

[15] The parties' evidence establishes that the Tenants paid the Landlord part of December 2025 rent, in the amount of \$1,200.00.

Tenants' Notice on October 27, 2025

[16] On October 27, 2025 the Tenants emailed the Landlord informing that they would not be moving into the Unit.

[17] The procedure for ending a fixed-term tenancy by notice is stated in subsection 55(3) of the *Act*:

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.

[18] The Notice only ended the tenancy as of April 30, 2026, the last day of the fixed-term. Therefore, the Tenants' maximum liability for rent owing was \$12,000.00 (5 months multiplied by \$2,400.00).

[19] After the Tenancy Agreement was signed, one of the Tenants had a motorcycle accident and this tenant was also diagnosed with a serious medical condition. The Tenants submitted into evidence a letter from this tenant's doctor. The Tenants provided evidence that the Unit was no longer suitable to the Tenants due to this change of circumstances. The Tenants stated that they could not afford to rent the Unit and also rent another rental unit that was suitable for them.

[20] The Tenants' evidence establishes a significant, negative change after the Tenancy Agreement was signed.

[21] Section 57 of the *Act* provides for circumstances where a tenant can provide notice to end a fixed-term tenancy as if it was a monthly tenancy (one full month's notice). However, this section does not include a provision that allows for early termination based upon a rental unit no longer being suitable because of changes in health. It also does not include a provision regarding circumstances where a tenant cannot afford to rent two units.

[22] As a result, the Notice did not terminate the Tenancy Agreement before April 30, 2026.

[23] The Tenancy Agreement non-refundable cancellation clause states that the Landlord can automatically keep the Tenants' December 2025 rent payment of \$1,200.00. However, this clause is invalid because the Landlord is required to establish rental income losses. I find that the non-refundable cancellation clause is invalid under section 5 of the *Act*, which 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.

Landlord's Mitigation

[24] Section 46 of the *Act* discusses mitigation (reducing losses), stating as follows:

Where a tenant abandons the rental unit, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.

[25] The Landlord and the Tenants were responsible for reducing losses at common law.

[26] The Landlord stated that the Unit was re-listed on Facebook Marketplace on October 27, 2025 after the Landlord received the Notice. The Landlord had two or three inquiries but was unsuccessful re-renting the Unit at the monthly rent in the Tenancy Agreement. Around November 5, 2025 or later the Landlord reduced the listing price to get more interest in the Unit and because the Landlord would soon be travelling out of country.

[27] The Landlord re-rented the Unit for a monthly rent of \$2,000.00 from December 1, 2025 to March 31, 2026, a monthly rent reduction of \$400.00 and one month shorter than the Tenancy Agreement's fixed-term.

[28] The Landlord stated that the Unit is not licensed for short-term rentals. Further, if the Unit had been licensed, then time would have been needed to prepare the Unit for re-rental after the current tenants move out.

[29] As a result, the Landlord faces lost rental income due to the rent reduction from \$2,400.00 to \$2,000.00, in the amount of \$1,600.00 (four months multiplied by \$400.00) and for April 2026 rent, in the amount of \$2,400.00. The total amount is \$4,000.00.

[30] Based upon the evidence presented, the Landlord sufficiently mitigated losses.

[31] I find that the Tenancy Agreement ended November 30, 2025 because the Landlord had the Unit re-rented for December 1, 2025. However, the Landlord incurred a loss after the Tenancy Agreement ended, which is a permitted claim under clause 85(1)(d) (see also Island Regulatory and Appeals Commission (the "Commission") Order LR25-25).

[32] I also need to consider the Tenancy Agreement's restriction against subletting and its impact on the Tenants' ability to mitigate losses.

Tenants' Mitigation

[33] Landlords are required to prepare written tenancy agreements. When residential rental issues arise, the first place landlords and tenants commonly check is the provisions of their written tenancy agreement.

[34] Sections 10 and 11 of the *Act* set out the required content of tenancy agreements. In particular, clause 11(2)(a) of the *Act* 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;

[35] Landlords are required to include Part 2, Division 4 (sections 19 to 37) in all written tenancy agreements. These provisions inform tenants of their rights and responsibilities regarding many aspects of a typical landlord-tenant relationship during a tenancy.

- [36] The inclusion of these provisions in tenancy agreements helps prevent confusion regarding the proper processes that landlords and tenants need to follow.
- [37] Section 30 addresses rights, responsibilities and procedures for assigning and subletting tenancy agreements. This section essentially establishes a right for a tenant to assign or sublet a tenancy agreement with the written consent of their landlord, which cannot be arbitrarily or unreasonably be withheld.
- [38] The Tenancy Agreement prohibited subletting (page 6). This provision conflicts with the Tenants' right to sublet under section 30 of the *Act*.
- [39] The Tenants' email to the Landlord on November 4, 2025 indicates that the Tenants were willing to assist the Landlord with finding new tenants for the Unit. The Landlord did not respond to the Tenants' email.
- [40] It is unknown whether the Tenants would have sublet or assigned the Tenancy Agreement had the Landlord informed the Tenants of these rights by including the mandatory terms in this agreement and excluding the subletting prohibition. It is possible that the Tenants could have assigned or sublet the Unit in a manner that further reduced the Landlord's lost rental income, below \$4,000.00.
- [41] In these circumstances, where the Landlord has engaged in reasonable mitigation efforts but included a prohibited clause that impeded the Tenants' ability to mitigate, I find that the Landlord is limited to 50% of the lost rental income, in the amount of \$2,000.00.

B. Must the Landlord compensate the Tenants double the security deposit balance?

- [42] The Landlord argued that the terms of the Unit's advertisement listing and the terms of the Tenancy Agreement permit the Landlord to automatically keep the security deposit.
- [43] I note that subsection 15(a) of the *Act* prohibits a landlord from automatically keeping the security deposit, stating as follows:

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.

- [44] As a result, the Tenancy Agreement cancellation clause is invalid.
- [45] For the reasons below, I find that the Landlord must compensate the Tenants double the security deposit amount because the Landlord did not return the security deposit to the Tenants within 15 days after the date the tenancy ended or file an application with the Rental Office to keep the security deposit.
- [46] Section 40 of the *Act* provides the rules for keeping and returning security deposits, 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.*

- [47] The Landlord was required to comply with subsection 40(1) regarding the security deposit. The Landlord did not return the security deposit or file an application with the Rental Office by December 15, 2025 to keep the security deposit.
- [48] At the hearing the Landlord stated that he did not know that a *Form 2(B) Landlord Application to Determine Dispute* existed.
- [49] If you are in the residential rental business, then you need to know the rules in the *Act*. In particular, there are numerous publicly available Rental Office and Commission decisions regarding the rules for keeping or returning a security deposit and the consequences of non-compliance. Lack of knowledge regarding the rules is not a valid defence of the consequences.
- [50] I have determined, above, that the Tenancy Agreement ended on November 30, 2025 because the Landlord had the Unit re-rented for December 1, 2025.
- [51] There are no earlier Rental Office decisions authorizing the Landlord to keep the security deposit under subsection 40(2).
- [52] There was no mutual agreement or other basis under subsection 40(3) under which the Landlord would be in compliance with section 40.
- [53] As a result, the Landlord must compensate the Tenants double the security deposit balance of \$1,200.00 in accordance with subsection 40(4). The Landlord must also compensate the Tenants security deposit interest in accordance with subsection 14(9).
- [54] The Tenants have established a security deposit compensation claim of \$2,412.26, calculated as follows:

Item	Amount
Security deposit	\$1,200.00
Interest (20 SEP 2025 to 11 FEB 2026)	\$12.26
Double security deposit	\$1,200.00
Total:	\$2,412.26

Tenancy Agreement Content

- [55] Since April 8, 2023 landlords on Prince Edward Island have been required to prepare written tenancy agreements containing specific information.
- [56] Subsections 11(1) and (2) of the *Act* state:
 - (1) *A landlord shall prepare a written tenancy agreement in respect of a tenancy that is entered into on or after the date this Act comes into force.*

- (2) *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.*

[57] The Landlord must ensure that all tenancy agreement content complies with the Act.

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

CONCLUSION

[59] The Landlord has established a lost rental income claim of \$2,000.00.

[60] The Tenants are credited \$1,200.00 for the partial payment of December 2025 rent. The Tenants have also established a security deposit compensation claim of \$2,412.26 regarding non-compliance with section 40.

[61] The Landlord will pay the Tenants the net amount of \$1,612.26 (\$1,200.00 plus \$2,412.26 minus \$2,000.00) by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Landlord will pay the Tenants the net amount of \$1,612.26 by March 11, 2026.

DATED at Charlottetown, Prince Edward Island, this 11th day of February, 2026.

(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.