

INTRODUCTION

- [1] This decision addresses two applications filed by the Tenants and the Landlords with the Residential Tenancy Office (the "Rental Office") pursuant to the *Residential Tenancy Act*, cap. R-13.11 (the "Act").
- [2] The Tenants seek compensation for double the security deposit and dispute owing utilities.
- [3] The Landlords seek compensation for unpaid utilities, in the amount of \$1,017.40.

DISPOSITION

- [4] The Tenants have established a valid claim for double the security deposit, in the amount of \$2,600.00.
- [5] The Landlords have established a valid claim for unpaid utilities, in the amount of \$1,017.40.
- [6] These claims setoff and the Landlords will pay the Tenants the remaining balance, in the amount of \$1,582.60, in accordance with the timeline below.

BACKGROUND

- [7] The Unit is a three-bedroom, two-bathroom townhouse owned by the Landlords since 2023.
- [8] On January 15, 2024, the parties signed a written, fixed-term tenancy agreement from February 1, 2024 to January 31, 2025. After the fixed-term ended the tenancy continued on a monthly basis. Rent in the amount of \$2,600.00 was payable on the first day of the month. The excluded services and facilities clause states: "*standard utilities will be paid by the tenant based on their consumption i.e. Heat and light, internet & cable, water & sewer which is issued usually every 3 months by the city.*"
- [9] Between January 30, 2024 and February 26, 2024, the Tenants paid a security deposit to the Landlords, in the amount of \$2,600.00.
- [10] On September 16, 2025, the Tenants gave the Landlords a *Form 3 Tenant Notice of Termination* effective October 31, 2025.
- [11] On October 31, 2025, the Tenants vacated the Unit and the tenancy ended.
- [12] On November 20, 2025, the Tenants e-mailed the Landlords and the Rental Office a *Form 2(A) Tenant Application to Determine Dispute* seeking compensation for double the security deposit, including accrued interest (the "Tenant Application").
- [13] On November 20, 2025, the Landlords returned the Tenants' security deposit, in the amount of \$2,600.00.
- [14] On November 21, 2025, the Landlords paid the Tenants the accrued interest on the security deposit, in the amount of \$103.00.
- [15] On February 19, 2026, the Landlords e-mailed the Tenants and the Rental Office a *Form 2(B) Landlord Application to Determine Dispute* seeking compensation against the Tenants for unpaid utilities (the "Landlord Application"). Collectively, the Tenant Application and the Landlord Application are referred as the "Applications."
- [16] On February 27, 2026, the Rental Office sent the parties notice of a teleconference hearing scheduled for March 26, 2026.

- [17] On March 16, 2026, the Rental Office sent the parties a 100-page PDF evidence package.
- [18] On March 26, 2026, the Tenants and the Landlords participated in the hearing. The parties confirmed receipt of the evidence package and confirmed that all evidence submitted to the Rental Office was included.

ISSUES

- A. Must the Landlords compensate the Tenants double the security deposit?
- B. Must the Tenants compensate the Landlords for unpaid utilities?

ANALYSIS & FINDINGS

- [19] When a party makes an application to the Rental Office, the onus is on that party to support their application with convincing evidence. In this case, both parties have the onus to prove each of their claims on the civil standard of a balance of probabilities.

Issue A. double the security deposit

- [20] Section 40 of the *Act* addresses the retention and return of a security deposit, stating in part:
- (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.*
- [21] The Landlords stated that they did not intend to keep the Tenants' security deposit. However, due to a personal matter, they had to leave the province for a short period. Upon their return, the Landlords refunded the Tenants' security deposit along with the accrued interest.
- [22] The Tenants stated that they believed the Landlords were going to return their security deposit at the end of the tenancy. The Tenants stated that after the fifteen days passed, they filed the Tenant Application with the Rental Office. The Tenants stated that despite the Landlords' personal matters and having to leave the province, this does not negate the Landlords' responsibilities under the *Act*.

- [23] For the reasons below, I find the Landlord must compensate the Tenants double the security deposit. Section 40 requires landlords to either return a security deposit in full or file an application with the Rental Office within fifteen days after the date the tenancy ends.
- [24] The evidence establishes that the tenancy ended on October 31, 2025, pursuant to subsection 55(2). This means the Landlords had until Saturday, November 15, 2025 to return the full amount of the Tenants' security deposit or file an application with the Rental Office by Monday, November 17, 2025, during regular hours of operation. I find that the Landlords did neither in this case.
- [25] The Landlords did not return the full amount of the security deposit until November 20, 2025, and the accrued interest on November 21, 2025. This was twenty and twenty-one days after the end of the tenancy.
- [26] While I sympathize with the Landlords' circumstances in this case, I find that section 40 outlines the permitted exceptions to the fifteen-day deadline. In this case, there is no outstanding monetary order from the Rental Office against the Tenants, and there was no written agreement between the parties allowing the Landlords to keep all or a portion of the Tenants' security deposit.
- [27] I find that the Landlords' reasons for delaying the return of the Tenants' security deposit was not permitted under the *Act*. I find that the Landlords did not comply with the section 40 requirements. Therefore, by operation of law, the Landlords must compensate the Tenants double the security deposit, under subsection 40(4).
- [28] The Tenants' claim is established, in the total amount of \$2,600.00 (double the amount of the security deposit). The Tenant Application is allowed.

Issue B. unpaid utilities

- [29] The Landlords are seeking \$1,017.40 for unpaid utilities, particularly, water and sewer bills.
- [30] The Landlords stated that the tenancy agreement clearly stated that standard utilities, including water and sewer are the responsibility of the Tenants.
- [31] The Landlords stated that the water and sewer account remained in the Landlords' name throughout the tenancy to ensure uninterrupted service; however, the charges were the Tenants' responsibility.
- [32] The Landlords stated that the municipality issues the invoices quarterly. The Landlords stated that they did not forward the invoices to the Tenants, but the invoices were paid in full by the Landlords. The Landlords stated that the Tenants owe the consumption attributed over the tenancy period.
- [33] The Landlords stated that on November 20, 2025, they informed the Tenants of the amount owing for the water and sewer over the tenancy period.
- [34] The Tenants stated that the tenancy agreement stated that the water and sewer bills would be issued usually every three months. The Tenants did not dispute that the utilities would be their responsibility in the tenancy agreement, however, the Landlords never forwarded any water and sewer bills throughout the tenancy period.
- [35] The Tenants stated that there was no reasonable explanation for the Landlords withholding the water and sewer bills during the tenancy and only providing them after the Tenants filed the Tenant Application.

- [36] I have reviewed the evidence presented. The tenancy agreement establishes that water and sewer was the responsibility of the Tenants and that the bills usually would be released every three months. However, the evidence also establishes that the Landlords received the water and sewer bills electronically but did not forward the bills to the Tenants and did not seek payment from the Tenants throughout the tenancy period.
- [37] The Tenant Application states that the Tenants should not have to pay the utility bill because of the Landlords' failure to forward them throughout the tenancy period. The Tenants are essentially arguing acquiescence and equitable estoppel.
- [38] The Island Regulatory and Appeals Commission commented that section 101 of the *Act* provides that, except modified or varied by the *Act*, the common law respecting landlords and tenants applies in the province. Further, the British Columbia Court of Appeal has commented that the application of the common law of contract is at the core of the dispute resolution pursuant to that province's *Residential Tenancy Act* (see *Jestadt v Performing Arts Lodge Vancouver*, 2013 BCCA 183, at para 35.).¹
- [39] In this case, I find that the common law doctrine of waiver does not apply. The evidence does not establish that the Landlords had any intentional action in abandoning their contractual rights.²
- [40] In other jurisdictions, courts have found that adjudicator's failure to consider acquiescence and equitable estoppel, even though a party did not explicitly raise those equitable defences, was an error of law (see *LaBrie v Liu*, 2021 BCSC 2486). Although British Columbia is a different jurisdiction under different legislation, I believe a similar obligation exists for me and that I must consider any defence that is implicit in the submissions of the parties.
- [41] Acquiescence, or silence in the face of an action that conflicts with a contractual obligation under a tenancy agreement, may result in the acquiescing party being estopped from enforcing their legal rights. In this case, the Landlord's legal right to \$1,017.40 for unpaid utilities may be unenforceable if it is found that the Landlords acquiesced to paying the utilities themselves.
- [42] Throughout the tenancy (February 1, 2024 to October 31, 2025) the Tenants occupied the Unit but never received a water and sewer bill from the Landlords. The evidence presented establishes that neither party had any conversations throughout the tenancy regarding the water and sewer bills. The Tenants did not contact the Landlords to ask about the water and sewer bills, even after the third month of the tenancy passed and the Landlords did not ever forward the bills or expect payment for the bills throughout the tenancy. I find that the Landlords' silence throughout the tenancy and failure to forward the bills to the Tenants amounts to acquiescence.
- [43] When a party is found to have acquiesced to a deviation from strict contractual terms, courts (or tribunals) may decline to enforce the strict legal terms of an agreement and give other remedies as the equity of the case demands (see, for example: *Sturgeon Tire (1993) Ltd. v. Ramon Clifford Burron et al*, 2014 MBQB 73).
- [44] While I find that the Landlords' silence and failure to forward the utility bills amounts to acquiescence, the application of equity means I must give a remedy that is fair. Therefore, I must determine what is fair or equitable in this case.
- [45] Despite what is stated in the Tenant Application, I find that the Tenants' submissions did not dispute the responsibility and the expectation of paying the utility bills. The Tenants' concern was more surrounding the failure of the Landlords to give them a reasonable opportunity to pay throughout the tenancy, avoiding a lump sum amount.

¹ LR25-58, para 23, n 2.

² *Saskatchewan River Bungalows Ltd. V. Maritime Life Assurance Co.*, 1994 CanLii 10 (SCC), [1994] 2 SCR 490.

[46] The Landlords' evidence includes the water and sewer bills throughout the tenancy period. In this case, I find it fair that the Tenants reimburse the Landlords for the water and sewer consumption which was paid by the Landlords throughout the tenancy period. Despite the parties' mutual silence throughout the tenancy, I find that it is fair that the Tenants honour this provision under the tenancy agreement and reimburse the Landlords, in the full amount of \$1,017.40.

[47] Therefore, the Landlord Application is allowed.

CONCLUSION

[48] The Tenants have established a valid claim for double the security deposit, in the amount of \$2,600.00.

[49] The Landlords have established a valid claim for unpaid utilities, in the amount of \$1,017.40.

[50] These claims setoff and the Landlords will pay the Tenants to remaining balance, in the amount of \$1,582.60, in accordance with the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Landlords will pay the Tenants \$1,582.60 by May 15, 2026.

DATED at Charlottetown, Prince Edward Island, this 15th day of April, 2026.

(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.