

INTRODUCTION

- [1] This decision addresses two applications filed with the Residential Tenancy Office (the “Rental Office”) under the *Residential Tenancy Act* (the “Act”).
- [2] The Landlord seeks to keep the security deposit for cleaning and repairs.
- [3] The Tenants seek a return of the security deposit.

BACKGROUND

- [4] The Unit is the lower portion of an over-under duplex (the “Residential Property”) that the Landlord owns.
- [5] On May 31, 2024, the parties entered into a written, fixed-term tenancy agreement for the Unit, from June 1, 2024, to August 31, 2024. The tenancy was renewed as a fixed-term tenancy agreement from September 1, 2024, to August 31, 2025. Rent was \$2,500.00 due on the first day of the month. A security deposit of \$2,500.00 was paid on May 31, 2024.
- [6] On August 31, 2025, the Tenants vacated the Unit and the tenancy ended by mutual agreement.
- [7] On Monday, September 15, 2025, at 9:03 p.m., the Landlord emailed the Rental Office and the Tenants a *Form 2(B) Landlord Application to Determine Dispute* (the “Landlord Application”), seeking to keep the security deposit for cleaning and repairs.
- [8] The Landlord Application was sent to the Rental Office after the Rental Office's hours of operation. This means that the Landlord Application was not filed with the Rental Office until September 16, 2025, in accordance with subsection 33(7) of the *Interpretation Act*.
- [9] On January 3, 2026, the Tenants emailed the Rental Office and the Landlord a *Form 2(A) Tenant Application to Determine Dispute* (the “Tenant Application”), seeking the return of the security deposit.
- [10] On February 13, 2026, the Landlord emailed the Rental Office and the Tenants an amended *Form 2(B) Landlord Application to Determine Dispute* (the “Amended Landlord Application”), seeking to keep the security deposit for cleaning and repairs. The Amended Landlord Application amended the Landlord's name, which was cited incorrectly in the Landlord Application.
- [11] On May 15, 2026, the Rental Office emailed the parties notice of a tele-hearing scheduled for June 18, 2026.
- [12] On June 5, 2026, the Rental Office emailed the parties a 57-page PDF evidence package.
- [13] On June 18, 2026, the Landlord's representative (the “Landlord Representative”) and a Tenant, representing all four Tenants (the “Tenant Representative”), participated in the tele-hearing.
- [14] The parties confirmed receipt of the evidence package, and the Tenant Representative confirmed that it contained all evidence submitted by the Tenants. The Landlord Representative stated that he had received the evidence package but had not reviewed it before the hearing. The Landlord Representative stated that he was not seeking a postponement.
- [15] After the hearing, the parties were permitted to provide additional evidence, with a final submission deadline of June 29, 2026. Both parties provided additional submissions, which were shared with the other party and added to the record.

DISPOSITION

[16] The Landlord must pay the Tenants \$5,132.46 by the timeline below.

ISSUE

A. What is the disposition of the security deposit?

ANALYSIS & FINDINGS

[17] The Landlord Representative stated that he was seeking to keep the security deposit for cleaning and repairs. There was no damage to the Unit before the Tenants moved in. During the summer of 2024, mould started to form in the Unit, and the Landlord Representative told the Tenants to use the heat pump.

[18] The Landlord Representative stated that the Tenants moved out on August 31, 2025, and the tenancy ended by mutual agreement. After the Tenants moved out, the Landlord Representative found that the Unit was damaged and unclean. It took 22 hours to clean and repair the Unit, and it also required repainting.

[19] The Landlord Representative stated that no move-in or move-out inspection was completed. The Landlord Representative submitted photographs of some of the alleged damage. The Landlord Representative submitted a painting invoice dated August 6, 2025, for painting 10 cottages.

[20] The Tenant Representative stated that the Tenants were seeking the return of the security deposit. Four Tenants were living in the Unit, so some wear and tear was to be expected. After the first month, the Tenants observed mould in the Unit and notified the Landlord Representative. The mould was not the Tenants' fault, as the Unit was always damp. The Tenants also had to pay additional electricity costs because they were required to run the heat pump constantly.

[21] Section 40 of the Act addresses the retention and return of a security deposit 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.*

- [22] For the reasons below, I find that the Landlord must return the security deposit and compensate the Tenants double the security deposit. Section 40 requires a landlord to either return the security deposit in full or file an application with the Rental Office within 15 days after the tenancy ends.
- [23] The evidence establishes that the tenancy ended on August 31, 2025, by mutual agreement. This means the Landlord had until September 15, 2025, to return the full amount of the Tenants' security deposit or file an application with the Rental Office. I find that the Landlord did not return the security deposit and did not file the Landlord Application until September 16, 2025.
- [24] As noted above, the Landlord Application was sent to the Rental Office on September 15, 2025, after its hours of operation. Therefore, the Landlord Application was not filed with the Rental Office until September 16, 2025 (day 16) in accordance with subsection 33(7) of the *Interpretation Act*.
- [25] 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 Landlord to keep all or a portion of the Tenants' security deposit.
- [26] In Order LR25-33, the Island Regulatory and Appeals Commission (the "Commission") commented on a landlord's section 40 requirements stating:
- "As considered in Commission appeal Order LR25-17 Xianfeng Yue and Ying Zhao v. Steve Dyer (see especially paragraphs 18-21), section 40 of the Act requires the return of the security deposit within 15 days subject to specific exceptions and if a landlord fails to follow those requirements the penalty of a double deposit award is imposed under subsection 40(4). Neither the Rental Office nor the Commission on appeal has been given any discretion to allow for forgiveness of a landlord's section 40 non-compliance."*
- [27] I find that the Landlord did not comply with the section 40 requirements. Therefore, by operation of law, the Landlord shall not make a claim against the security deposit, and the Landlord shall return the security deposit and compensate the Tenants double the security deposit, under subsection 40(4), as calculated below.
- [28] Additionally, the Landlord did not seek compensation in excess of the security deposit to offset its claim. Because the Landlord did not make an application seeking compensation beyond the security deposit, I cannot determine any entitlement to additional compensation (see Commission Order LR26-06).
- [29] However, if the Landlord had made an application for additional compensation, I find that the Landlord has provided insufficient evidence to establish the Landlord's claims for cleaning or damage.

CONCLUSION

- [30] The Tenants have established a claim for the return of the security deposit, plus interest, and for compensation equal to double the security deposit, as calculated below.
- [31] The Landlord Application and the Amended Landlord Application are denied.
- [32] My calculations are as follows:

Item	Amount
Security deposit	\$2,500.00
Interest (May 31/24 – July 15/26)	\$132.46
Double security deposit	\$2,500.00
Total payable	\$5,132.46

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenants \$5,132.46 by August 31, 2026.

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

(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.