



Date Issued: December 12, 2024
Dockets: LR24076
Type: Rental Appeal

INDEXED AS: Strategic Holdings Inc. v. Vinay and Rutviben Patel
Order No: LR24-70

BETWEEN:

Strategic Holdings Inc. (the "Landlord")

Appellant

AND:

Vinay and Rutviben Patel (the "Tenants")

Respondents

ORDER

Panel Members:

M. Douglas Clow, Acting Chair
Kerri Carpenter, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on November 27, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord must pay the Tenants double the security deposit plus interest totalling \$4,266.35.

B. BACKGROUND

2. This appeal concerns a rental unit located at 24 Starlite Street, Summerside, PEI (the “Rental Unit”). On June 14, 2023 the parties entered into a written, fixed-term tenancy agreement for the period of August 1, 2023 to August 1, 2024. On June 14, 2023 the Tenants paid a \$2,100.00 security deposit to the Landlord. Rent in the amount of \$2,100.00 was due on the first day of the month.
3. On July 31, 2024 the Tenants vacated the Unit. The Tenants had previously notified the Landlord that they would be moving out.
4. On September 4, 2024 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Tenants’ Application”) with the Residential Tenancy Office (the “Rental Office”). The Tenants’ Application seeks compensation for double the security deposit plus interest on the original security deposit.
5. On October 10, 2024 the Tenants and the Landlord’s representative participated in a teleconference hearing for determination of the Tenants’ Application. At the hearing the Landlord was permitted to file an application regarding the wall damage invoice and photographic evidence in the Evidence Package, to be determined together with the Tenants’ Application.
6. On October 10, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* with the Rental Office regarding the wall damage claim in the Evidence Package (the “Landlord’s Application”). The Tenants were provided an opportunity to respond to the Landlord’s Application.
7. The Residential Tenancy Office issued Order LD24-344 on October 16, 2024, which ordered the Landlord to pay the Tenants \$4,266.35 by November 5, 2024.
8. The Landlord appealed Order LD24-344 on October 24, 2024.
9. The Commission heard the appeal on November 27, 2024, by way of telephone conference. The Landlord Strategic, Holdings Inc. was represented by Marlene Inman and the Tenants, Vinay Patel and Rutviben Patel, attended on their own behalf.

C. DISPOSITION

10. The appeal is dismissed and Order LD24-344 is confirmed.

D. SUMMARY OF EVIDENCE

11. Ms. Inman testified that the Rental Unit was new when the Tenants moved in. She did a walk through on July 31, 2024, being the last day of the tenancy, and found the Rental Unit to be very clean. She noted that her walk through was a quick view and she did not use a walk through checklist. She stated that the Nathan Kember, the owner of the Corporate Landlord, as a matter of practice, takes a second walk through and, in this case, he did not do his walk through until late August 2024 and noted damage such as indentations and areas where the paint was missing from the walls. In her testimony before the Commission, Ms. Inman stated that Nathan Kember was delayed in performing the second inspection as he was busy. The Landlord then offered to return the security deposit minus \$400 but the Tenants would not accept this offer. Ms. Inman stated that there was a delay with the second walk through because Mr. Kember was busy and often away. The Landlord provided in evidence Exhibit E-10 an invoice from Strategic Construction (a company with the same ownership as the Landlord) in the amount of \$500.00, which the representative testified was for the repairs needed in the Rental Unit.
12. The Tenants stated at the hearing that they were in full agreement with the decision of the Residential Tenancy Officer (RTO) in Order LD24-344.

E. ANALYSIS

13. In the present appeal the first issue is whether the Landlord has complied with the requirements of section 40 of the *Residential Tenancy Act* (the “Act”). The second issue is whether the Landlord is eligible for compensation for repairs that are required due to the Tenants causing damage beyond reasonable wear and tear.
14. Having heard the testimony of the parties and having reviewed the documents on file with the Commission, the Commission agrees with the Rental Office that the Landlord did not comply with the section 40 requirements for retaining a security deposit and therefore, by operation of law, the Landlord must pay the Tenants double the security deposit together with interest on the original portion of the security deposit.
15. Subsections 40(1) to (4) read

Return of security deposit

(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.

Landlord may retain amount from 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.

Retention by landlord, other circumstances

- (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.

Consequences of non-compliance

- (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.

16. The undisputed evidence before the Commission is that the tenancy ended on July 31, 2024. On that date, Ms. Inman, acting as the Landlord's representative, inspected the Rental Unit. Ms. Inman's evidence was that the Rental Unit was clean but acknowledged that her inspection was quick and did not use a checklist. The Landlord did not return any of the \$2100.00 security deposit to the Tenants within 15 days of the end of the tenancy. The Landlord did not file an application to retain the security deposit within 15 days of the end of the tenancy. There were no earlier decisions of the Rental Office or the Commission authorizing the Landlord to retain all or part of the Tenants' security deposit. There was no written agreement between the parties entered into at the end of the tenancy permitting the Landlord to retain all or part of the security deposit.
17. With respect to the Landlord having done a second inspection in late August, 2024, the Commission notes that the *Act* does not require or even reference a second inspection. This second inspection was a policy of Mr. Kember, the owner of the Corporate Landlord. The Landlord's adherence to this policy delayed the Landlord's response resulting in the Landlord failing to comply with section 40 of the *Act*. Section 40 does not have any provision to waive or extend the 15-day deadline requirements for landlords, regardless of the circumstances. In this case, the Landlord did not meet the requirements of section 40 and therefore must pay the Tenants double the security deposit.
18. With respect to the second issue as to whether the alleged damage exceeded reasonable wear and tear, the Commission notes that there were no inspection reports prepared to establish the condition of the Rental Unit at the time of the Tenants' move in and subsequently their move out. It is the evidence of Ms. Inman that the Rental Unit was new, having been recently constructed prior to the Tenant's moving in. The Tenants did not dispute this evidence. It is also Ms. Inman's evidence that the Rental Unit appeared to be nice and clean when she inspected it at the end of the tenancy.
19. The Commission notes that Nathan Kember did not testify as to his inspection. He did not prepare an inspection report. He did take pictures; however, these pictures were taken approximately one month after the Tenants moved out. Inspections should be done at the end of the tenancy, not a month later.

20. The Commission also notes that the invoice from the related company is concerning given that it was dated August 1, 2024, being several weeks before the Landlord apparently did the viewing of the premises.
21. The Commission concludes that the Landlord has not established on a balance of probabilities that the damage complained of is beyond normal wear and tear, nor has the Landlord convinced the Commission of the reasonable cost of the repairs. The Commission agrees with the Rental Office in Order LD24-344 and denies any claim for damages to the Rental Unit.
22. The Commission finds that the Landlord must pay the Tenants double the security deposit plus interest on the original security deposit, calculated as follows:

Item	Amount
Security Deposit	\$2,100.00
Interest (June 14/23 to October 16/24)	\$ 66.35
Interest (October 17/24 to date of Order)	\$ 7.23
Security Deposit (double award)	<u>\$2,100.00</u>
TOTAL	<u>\$4,273.58</u>

F. CONCLUSION

23. The appeal is dismissed and Order LD24-344 is confirmed. The Landlord shall pay a double award of security deposit, together with interest, in the amount of \$4,273.58.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Order LD24-344 is confirmed.**
3. **The Landlord must pay the Tenants the sum of \$4,273.58 within 15 days of the issue date below.**

DATED at Charlottetown, Prince Edward Island, 12th day of December, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Acting Chair

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.