

Introduction

- [1] On April 24, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) with the Residential Tenancy Office (the "Rental Office") seeking the return of her security deposit.
- [2] On April 14, 2023 a representative of the Landlord e-mailed the Rental Office a Landlord Application to Determine Dispute (Form 2B) (the "Application"). The Application was filed to retain \$733.48 from the security deposit. The Landlord's representative mistakenly e-mailed the Application to the wrong e-mail address. The mistake was found during the hearing as the Application was in the evidence package. The parties agreed to proceed with the Application and that the Officer will make a determination of the security deposit based on the merits.
- [3] On July 7, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord participated in the hearing.

Issue to be Decided

- i. Is the Landlord entitled to retain a portion of the security deposit?

Summary of the Evidence

- [4] On March 1, 2021 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. The fixed term converted to a month-to-month agreement. Rent was \$1,000.00 due on the first day of the month. A security deposit of \$800.00 was required and paid. The Tenant vacated the Residential Property on March 31, 2023 and the tenancy agreement terminated. The total amount of the security deposit and accrued interest is \$806.61.

Landlord's Evidence and Submissions

- [5] The Landlord stated that after the Tenant vacated the Residential Property, water damage was found in the rental unit. The Landlord's representative stated that the photographs in evidence were taken by himself on April 1, 2023. The Landlord's representative stated that there was also additional damage to the rental unit's walls. The rental unit's keys needed to be replaced. The Landlord submitted into evidence numerous photographs, invoices and written submissions from contractors, professionals and the representative as it relates to the alleged damage to the rental unit.
- [6] The Application breaks down the reasons the Landlord wishes to retain the security deposit which include: unplugging the kitchen sink, painting, replacing a cap for plumbing, key replacement, new screen for window and the labour for painting the rental unit. The total amount is \$733.48.

Tenant's Evidence and Submissions

- [7] The Tenant stated that she moved out of the rental unit on March 31, 2023 and returned the rental unit keys on April 1, 2023. The Tenant stated that she never heard from the Landlord and did not receive any application or notices. The Tenant stated that she contacted the Rental Office and submitted the application as she was unaware of the Landlord's intentions as it relates to her security deposit.
- [8] The Tenant denied the allegations outlined in the Landlord's representative's testimony. The Tenant submitted into evidence written submissions along with photographs of conversations with the Landlord. The Tenant stated that she should not be held accountable for the damage of the kitchen when there was little communication regarding whose responsible until she vacated the rental unit.

Analysis

[9] The Officer notes that subsections 40.(1), (2), and (3) of the Act state:

Return of security deposit

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

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

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.*

[10] Subsections 28.(4) and (5) of the Act state:

Tenant responsible for undue damage

A tenant of a rental unit shall repair, in a good and professional manner, undue damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Tenant not responsible for reasonable wear and tear

A tenant is not required to make repairs for reasonable wear and tear to the rental unit or common areas of the residential property.

[11] The Officer notes that in such matters where there is a dispute over a security deposit, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all claims against the security deposit.

[12] The Officer finds that based on the totality of the evidence that the Landlord has established their claim in part. The Officer finds that the Landlord is entitled to retain \$288.50 from the security deposit. The Landlord shall return \$518.11 from the security deposit to the Tenant.

- [13] The Officer finds that the evidence suggests that the expenses as it relates to painting the rental unit would be considered *reasonable wear and tear*, which the Officer finds the Tenant is not responsible for such expenses.

Conclusion

- [14] The Application is allowed in part.
- [15] The Landlord shall retain \$288.50 from the security deposit.
- [16] The Landlord shall return \$518.11 from the security deposit to the Tenant forthwith.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$288.50 from the security deposit.
- B. The Landlord shall return \$518.11 from the security deposit to the Tenant forthwith.

DATED at Charlottetown, Prince Edward Island, this 28th day of July, 2023.

(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.