

Introduction

- [1] On April 21, 2023 the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking to retain the Tenant's security deposit.
- [2] The tenancy ended on April 30, 2023. The Landlord served the Tenant the Application by email on May 13, 2023.
- [3] On July 21, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and one of the Landlords participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] On May 30, 2009 the Landlord and the Tenant entered into a verbal month-to-month tenancy agreement. The Landlord and the Tenant signed a fixed-term one-year lease on March 5, 2011. The tenancy agreement has since reverted to a month-to-month agreement. The Residential Property is one half of a duplex. Rent was \$860.00 due on the first day of the month. A security deposit of \$700.00 was required and paid. The Landlord calculated the security deposit as \$723.59 after the application of interest.

Landlord's Evidence and Submissions

- [5] The Landlord submitted a breakdown of costs for repair of the Residential Property, totaling \$1,731.63. The Landlord provided numerous photographs of various rooms, surfaces and appliances in the Residential Property.
- [6] The Landlord submitted that the house was left in an unclean state. The Landlord testified that surfaces were left grimy, the walls were unclean, appliances had not been cleaned at all, floors had not been mopped, behind the fridge was left very dirty, the toilet was not clean, paint was left on floor tiles, among other complaints. The Landlord originally had a cleaning company do a survey of the Residential Property to determine the cost to clean it. The cleaning company provided a quote of \$1,081.00. The Landlord hired a family member to do the cleaning instead, for which he paid \$600.00. The Landlord testified that the family member spent numerous hours cleaning the property, including over four hours cleaning the oven alone.
- [7] The Landlord submitted that the Tenant damaged the countertop with two significant burn marks, as well as further damage on the side of the counter, leading to its replacement. The Landlord submitted receipts showing a cost of \$450 for the countertop replacement. The Landlord further submitted pictures of the countertop burn marks and side damage. The Landlord testified that there was a minor pre-existing ring mark on the countertop which was not caused by the Tenant.
- [8] The Landlord submitted that the Tenant failed to fill the oil tank up to three quarters capacity, as was listed as a requirement on the tenancy agreement. The Landlord testified that the Tenant had only filled the tank to 9/16 capacity. The Landlord testified that it cost \$159.00 to fill the tank up to three quarters capacity. The Landlord submitted the tenancy agreement which included a handwritten clause stating the Tenant is to fill the tank to three quarters upon vacating. The Landlord submitted a photo of the oil tank showing an oil level of approximately 9/16 capacity.

- [9] The Landlord submitted that a railing spindle had been improperly replaced by the Tenant, which led to him needing to replace it for \$22.41. The Landlord further submitted that a light fixture was damaged, costing \$165.58 to replace. Along with a number of other miscellaneous expenses, including for missing window cranks and damaged window screens, the Landlord claimed \$1,731.63 in repair costs.
- [10] The Landlord testified that he fully considered the standard of ordinary wear and tear in consideration of repair costs. The Landlord testified that he did not account for scuffs and wear on the floors and walls. The Landlord testified that he did not account for the significant labour cost for the countertop installation. The Landlord testified that there were also some paint marks in a sink prior to the Tenant moving in, which was not included in the repair cost total.
- [11] The Landlord testified that while there was no entrance inspection performed with the Tenant when the tenancy began. The Landlord testified that there were only very minor issues with the Residential Property, such as paint marks in one sink and a ring mark on the counter, but overall the unit was very clean. The Landlord testified that there was no mould when the Tenant moved into the Residential Property.
- [12] The Landlord testified that an exit inspection was not possible. The Landlord testified that the Tenant had been appealing an eviction notice for the Residential Property, which extended the Tenant's vacate date. The Landlord testified that the Tenant informed him prior to the vacate date that she was leaving immediately and asked where to leave the keys. The Landlord submitted a screenshot of a message from the Tenant asking where to leave the keys.

Tenant's Evidence and Submissions

- [13] The Tenant testified that in calculating the claim against the security deposit the Landlord failed to consider prior damage and uncleanliness of the Residential Property prior to the Tenant moving in, as well as the application of a standard of reasonable wear and tear.
- [14] The Tenant testified that two marks did expand on the countertop over the course of the tenancy, although they were a result of a pre-existing ring mark to the counter that expanded over time.
- [15] The Tenant testified that the Residential Property was not cleaned before moving in. The Tenant testified that various surfaces were not cleaned, there were paint marks in a sink, and the oven was dirty. The Tenant testified that a light fixture was damaged upon moving in and was left that way over the course of the tenancy.
- [16] The Tenant testified that there was mould in closets and the bathroom. The Tenant testified that she wiped the mould a few times but did not report to the Landlord.
- [17] The Tenant acknowledged that she accidentally got paint on tiles of one room.
- [18] The Tenant argued that the Landlord is using the security deposit to renovate the Residential Property to a higher standard because the Landlord's daughter is moving into the Residential Property.
- [19] The Tenant further testified that the Landlord never performed an inspection at the start or the end of the tenancy, as is required under the *Act*.

Analysis

- [20] The Officer notes subsections 40(1), (2), and (3) of the *Act* state:

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.*

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

Tenant responsible for undue damage

- (4) *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

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

[22] The Officer further notes tenant obligations upon leaving a rental unit, pursuant to subsection 39(2) of the Act, which states:

Obligations on vacating

- (2) *When a tenant vacates a rental unit, the tenant shall*
- (a) ***leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear; and***
 - (b) *give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property [emphasis added].*

[23] 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.

- [24] The Officer finds that the Landlord has established his claim and that the cost of repairs to the Residential Property exceeds the amount of the security deposit.
- [25] The Officer notes the cost of the countertop repair and filling the oil to three-quarters capacity alone account for nearly all the security deposit. The Officer finds that the cleaning costs were also reasonably incurred based on the conditions of the Residential Property. The Officer notes the Landlord's photos depicting the Residential Property, in particular the oven, behind the fridge, various walls, and the paint on the floor tiles.
- [26] The Officer finds that the Residential Property did not meet of being reasonably clean and undamaged except for reasonable wear and tear. The Officer finds that the Landlord's expenses exceeded the amount of the security deposit.
- [27] The Officer notes that the Landlord did not perform inspections of the Residential Property at the start and end of the tenancy. The Officer notes subsections 18.(1) and 38.(1), and 40.(6) of the Act:

Inspection at start of tenancy

- (1) *The landlord and tenant, or their authorized agents, shall inspect the condition of the rental unit in each other's presence on the day the tenant is entitled to possession of the rental unit or on another day agreed on by them*

Inspection at end of tenancy

- (1) *The landlord and tenant, or their authorized agents, shall inspect the condition of the rental unit in each other's presence before a new tenant begins to occupy the rental unit*
(a) *on or after the day the tenant ceases to occupy the rental unit; or*
(b) *on another day agreed upon by them.*

Presumption

- (6) *Where an application to the Director has been made in accordance with clause 1(d), the Director may draw an adverse inference against the landlord or tenant for failing to comply with section 18 or 38.*

- [28] The Officer notes that subsection 40.(6) incorrectly refers to clause 1(b) as "1(d)". There is no clause 40.(1)(d), whereas clause 40.(1)(b) is the correct clause pertaining to making an application.
- [29] Based on the testimony and submitted evidence of the Landlord, the Officer accepts the Landlord's submission that an end inspection was not performed with the Tenant as the Tenant vacated the Residential Property unexpectedly while the Tenant's eviction was still under appeal.
- [30] The Application is allowed and the Landlord shall retain the entirety of the security deposit in the amount of \$723.59.

Conclusion

- [31] The Application is allowed.
- [32] The Landlord shall retain the entirety of the security deposit in the amount of \$723.59.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain the entirety of the security deposit in the amount of \$723.59.

DATED at Charlottetown, Prince Edward Island, this 3rd day of August, 2023.

(sgd.) Colin Trewin

Colin Trewin
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.