

Introduction

- [1] On June 5, 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 Tenant vacated the Residential Property on May 25, 2023.
- [3] On August 24, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Representative for the Landlord ("J.G.") participated in the hearing. The Tenant did not participate in the hearing. The Officer telephoned the Tenant and emailed the Tenant before proceeding with the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] On January 1, 2023, the Landlord and the Tenant entered into a written month-to-month tenancy agreement. The Residential Property is an apartment in a 12-unit apartment building. Rent was \$1,150.00 due on the first day of the month. A security deposit of \$1,150.00 was required and paid.

Landlord's Evidence and Submissions

- [5] The Landlord submitted that he should be entitled to retain the security deposit based on uncleanliness and damage to the rental unit by the Tenant. The Landlord submitted that costs to repair and clean the Residential Property totaled \$1,400.00. The Landlord submitted these costs consisted of \$225.00 to remove garbage and broken furniture, \$850.00 to repaint the apartment and fix holes, \$175.00 to replace a closet door, and \$150.00 to have the apartment cleaned.
- [6] The Landlord submitted that the Application was served on the Tenant by text message. The Landlord submitted that he sent the Application by text message and explained why keeping the security deposit would be kept by the Landlord. The Landlord submitted that the Tenant responded by sending the Landlord his email for return of the security deposit.
- [7] The Landlord further submitted that the security deposit may be retained by the Landlord based upon Director Order LD23-221, directing the Tenant to vacate the Residential Property on May 25, 2023, and pay the Landlord \$2,077.42 for rent owing.

Tenant's Evidence and Submissions

- [8] The Tenant did not submit any evidence.

Analysis

- [9] The Officer notes subsections 40.(1), (2), and (3), and subsections 100.(1) and (3) of the Act state:

40. 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.*

100. Service of documents

- (1) *A document that is required or permitted under this Act to be given to or served on a person shall be given or served in one of the following ways:*

- (a) *giving the document personally to the other party;*
- (b) *if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) *sending the document by registered mail or ordinary mail to the other party at an address provided by the other party;*
- (d) *sending the document electronically where*
 - (i) *it is provided in the same or substantially the same form as the printed document,*
 - (ii) *the other party has provided an electronic address for receipt of documents, and*
 - (iii) *it is sent to that electronic address;*
- (e) *where the other party is a corporation, by giving a copy of the document personally to a director, manager or other officer of the corporation or by leaving it at, or sending it to, the registered office of the corporation by a method set out in clause (c) or (d);*
- (f) *posting the document in a conspicuous place on the entrance of the rental unit;*
- (g) *by any other means of service prescribed in the regulations.*

Order deeming service

- (3) *Despite subsection (1), the Director may order that a document not served in accordance with subsection (1) was sufficiently given or served for the purpose of providing notice to an affected person under this Act.*

- [10] The Officer notes that the Landlord served the Application to the Tenant by text message. The Landlord submitted that the Tenant received the Application and responded to the text message. The Officer finds that service of the Application on the Tenant was sufficient to provide notice to the Tenant under subsection 100.(3) of the Act.
- [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.

Claim: Damage and Cleanliness

- [12] The Officer finds that the evidence and testimony provided by J.G. does not establish the Landlord's claim for retaining the Tenant's security deposit. The Officer notes that the Landlord did not provide sufficient evidence, such as photographs or direct witness testimony, to sufficiently establish its claim. Further, the Officer notes that the Landlord did not provide any documentary evidence such as receipts or invoices to establish the alleged costs to repair and clean the Residential Property.

Claim: Unpaid Rental Arrears

- [13] The Officer notes that part of the evidence submitted was the previous Rental Office Order LD23-221, which found that the Tenant owed the Landlord \$2,077.47 in rental arrears. J.G. testified that the Tenant has not paid the outstanding balance. The Officer finds that the Landlord may retain the entire amount from the security deposit to pay part of the outstanding balance found in Order LD23-221. Therefore, the Officer finds that the Landlord may retain the full amount of the security deposit in the amount of \$1,1150.00 to offset the amount ordered in Order LD23-221. The Application is allowed.
- [14] The Officer wishes to remind landlords that a landlord does not need to make an application to the Rental Office to retain the security deposit when the Rental Office or Commission has already ordered the tenant(s) to make payment to the landlord, pursuant to subsection 40.(2) of the *Act*.

Conclusion

- [15] The Application is allowed.
- [16] The Landlord shall retain the full amount of the security deposit in the amount of \$1,150.00 for outstanding rental arrears as ordered in LD23-221.

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed.
- B. The Landlord shall retain the full amount of the security deposit in the amount of \$1,150.00 for outstanding rental arrears as ordered in LD23-221.

DATED at Charlottetown, Prince Edward Island, this 28th 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.