

## Introduction

- [1] On May 15, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking a return of the Tenant's security deposit. The Tenant vacated the Residential Property on March 31, 2023.
- [2] The Landlord provided the Tenant with a Notice to Retain the Security Deposit (Form 8) dated April 3, 2023 (the "Notice"). The Landlord is seeking to retain \$725.00 from the security deposit, consisting of \$475.00 for replacement of a damaged countertop and \$250.00 for cleaning and painting the rental unit.
- [3] On September 1, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and a Representative for the Landlord ("J.G.") participated in the hearing.

## Preliminary Issues

- i. Which legislation is applicable to this matter?
- ii. Is the Form 8 Notice to Retain the Security Deposit valid?

## Preliminary Analysis

- [4] The Officer notes the following sections of the Act:

### **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.*

### **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.*

**110. Transitional - security deposits**

*Where a landlord holds a security deposit in accordance with the former Act, the security deposit is deemed to be held in accordance with this Act and the provisions of this Act respecting security deposits apply*

- [5] The Officer notes that the Landlord served the Tenant with the previous Notice under the *Rental of Residential Property Act*, RSPEI 1988, c R-13.1 (“*RRTA*”), on April 3, 2023, when the prior legislation was law. The Tenant submitted the Application on May 17, 2023, under the current *Act*.
- [6] The Officer finds that a security deposit held after the enactment of the current *Act* is deemed to be held in accordance with the current *Act*, pursuant to section 110. of the *Act*. Therefore, this matter falls under the jurisdiction of the current *Act*.
- [7] The Landlord used the Notice under the *RRTA*, rather the Form 2B as required under subsection 40.(1)(b) of the current *Act*. However, the Officer finds that the application of the *Interpretation Act*, RSPEI 1988, c I-8 (“*Interpretation Act*”) allows the Notice to proceed under clause (e) of the current Form 2B.
- [8] The Officer notes the application of section 30 of the *Interpretation Act*, which states:

***Effect of deviation from specified form***

*Where an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if*

- (a) *the deviations do not affect the substance;*  
(b) *the deviations are not likely to mislead; and*  
(c) *the form used is organized in the same way or substantially the same way as the form the use of which is required.*

- [9] The Officer notes that the relevant section on the current Form 2B is clause (e), which states:

*To make a claim against the security deposit pursuant to s. 40.(1)(b) of the Act*

- [10] The Officer finds that the Tenant was not prejudiced by the use of the previous Notice. The Officer finds that the Tenant was aware of the reasons for the Notice and was given the opportunity to make full answer and defence.
- [11] The Officer further finds that the Landlord’s lack of service of the Notice to the Director is overcome as the Tenant filed the Application on May 15, 2023, allowing for the merits of the dispute to be heard at the hearing. For these reasons, the Officer finds that subsection 40.(4) of the *Act* is not triggered.

**Issue to be Decided**

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

## Summary of the Evidence

- [12] The Tenant testified that on January 1, 2022, the Landlord and the Tenant entered into a written month-to-month tenancy agreement. The Residential Property is an apartment in a 12-unit building. Rent was \$975.00 due on the first day of the month. A security deposit of \$975.00 was required and paid. Due to interest, the security deposit has since accrued to \$983.45.

### Landlord's Evidence and Submissions

- [13] The Landlord submitted that the Tenant left the rental unit in a damaged and unclean state. J.G. testified that an inspection had been performed with the Tenant at the beginning of the tenancy, where it was observed that the rental unit was clean and undamaged.
- [14] The Landlord submitted photographs of the rental unit. The photographs depict severe mould and mildew around a number of windows and walls, significant dirt accumulation on various walls, an uncleaned oven, among others. J.G. testified that it was clear from the mould and mildew around the windows and walls that the Tenant allowed moisture to enter the rental unit by leaving the windows open and failing to ensure proper airflow. The Landlord submitted that the cost to clean the rental unit was \$250.00 based on supplies used and time spent cleaning. J.G. testified that this was a very conservative estimate.
- [15] J.G. testified that the kitchen countertop was significantly damaged, which required partial replacement. The Landlord submitted a photograph of the countertop which showed a hole or dark mark on the kitchen countertop. The Landlord submitted an invoice listing \$475.00 as the material cost to replace the right side of the kitchen countertop. J.G. testified that he did not make a claim for the HST on the countertop or his labour costs to install it.
- [16] J.G. testified that he attempted to return the remainder of the security deposit via e-transfer, but has been unsuccessful. J.G. testified that the Tenant's email appears to be invalid and that he has requested an alternative means to send the remainder of the e-transfer, which the Tenant has not done. The Landlord submitted copies of text messages with the Tenant which show J.G. asking for the Tenant's email because he has tried to send it to her four times unsuccessfully.
- [17] J.G. further testified that text message conversations submitted by the Tenant make it appear that he is unresponsive regarding repairs, but he often telephoned the Tenant in response to text messages.

### Tenant's Evidence and Submissions

- [18] The Tenant testified that some of the damage to the rental unit was a consequence of Hurricane Fiona, for which she is not responsible.
- [19] The Tenant testified that J.G. did not fulfill his responsibilities as the building manager. The Tenant testified that she had made complaints about needing repairs for the rental unit which were not completed. The Tenant further testified that J.G. was very unresponsive to text messages she sent to him regarding the rental unit. The Tenant submitted copies of text messages with J.G., which depict several repair requests without responses from J.G.
- [20] The Tenant testified that she requested a copy of the written tenancy agreement from the Landlord but was not provided with one.

## Analysis

- [21] The Officer notes that in 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.

- [22] Based on the totality of the evidence, the Officer finds that the Landlord has established its claim to retain part of the security deposit. The Officer notes the photograph of the damaged countertop and the Landlord's invoice of \$475.00 for the cost to replace the damaged countertop.
- [23] The Officer further notes the Landlord's photographs depict the rental unit as being unclean beyond the standard of ordinary wear and tear. The Officer notes the presence of severe mould and mildew around a number of windows and walls. The Officer notes J.G.'s testimony that an inspection was performed at the beginning of the tenancy where it was observed that the rental unit was clean and undamaged. The Officer finds that based on the totality of the evidence, a \$250.00 cleaning fee is reasonable.
- [24] The Officer finds that the Landlord is entitled to retain a portion of the security deposit, in the amount of \$725.00. The Officer finds that the Tenant is entitled to a partial return of the security deposit in the amount of \$258.45.

**Conclusion**

- [25] The Application is allowed in part.
- [26] The Landlord shall retain \$725.00 from the security deposit.
- [27] The Landlord shall return \$258.45 from the security deposit to the Tenant forthwith.

**IT IS THEREFORE ORDERED THAT**

- A. The Landlord shall retain \$725.00 from the security deposit.
- B. The Landlord shall return \$258.45 from the security deposit to the Tenant forthwith.

**DATED** at Charlottetown, Prince Edward Island, this 8th day of September, 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.