

Introduction

- [1] On May 4, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed seeking:

To request my tenant vacate the rental unit and ordering the Sheriff to put me into possession of the rental unit;

To make a claim against the security deposit; and

Other: please see attached.

- [2] The Landlord submitted a two-page statement of facts along with the Application.
- [3] On September 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlord participated in the hearing and the Tenant did not participate. The Landlord stated she was only seeking to retain \$250.00 from the damage deposit as the Tenant had already vacated the property on April 30, 2023. The Officer notes that the hearing had been rescheduled several times for various reasons.

Issue to be Decided

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

Summary of the Evidence

- [4] In September of 2022, the Tenant and the Landlord entered into a verbal, month-to-month tenancy agreement for the Residential Property. The Residential Property consisted of a room within an apartment. Rent was \$750.00 per month due on the first day of the month. A security deposit of \$750.00 was paid. The Tenant vacated the Residential Property on April 30, 2023. The Landlord stated she has already returned \$500.00 of the Tenant’s security deposit.

Landlord’s Evidence and Submissions

- [5] The Landlord stated she is seeking to retain \$250.00 from the damage deposit for damage to a closet door. She stated the actual cost to repair the door was \$400.00 but she is not seeking that much. She stated the Tenant sent her a text message on March 16, 2023, with a photograph of the damaged closet door. The Tenant stated a wooden piece of furniture fell and damaged the door. The Tenant stated he found the damage after he returned to the apartment. The Tenant texted the Landlord asking if the Landlord’s cats could have knocked over the furniture. The Landlord testified her cats could not have knocked over the furniture and she stated that the Tenant must have caused the damage.
- [6] The Landlord submitted into evidence a copy of the Tenant’s text messages and the photo of the damaged door. After the hearing the Landlord submitted a copy of the invoice for the damaged door as well as copies of the Tenant’s e-transfers showing that the Tenant paid \$750.00 for the security deposit. A copy of the invoice and the e-transfers were emailed to the Tenant by the Officer. The Tenant was notified he could respond to the evidence with any submissions before September 25, 2023, at 4:00 p.m.

Tenant's Evidence and Submissions

- [7] On September 23, 2023, the Tenant submitted that the furniture that fell on the wall belonged to the Landlord and he cannot be blamed for the "mess and accidents that she causes."

Analysis

- [8] The Landlord is seeking to retain part of the security deposit in the amount of \$250.00 for damages. 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.
- [9] The Landlord stated she believes the closet door was damaged by the Tenant knocking over a piece of furniture. The Tenant submitted a text message to the Landlord stating he found the door was damaged after he returned home and asked if the Landlord's cats could have knocked over the furniture and caused the damage.
- [10] Subsection 28.(4) of the *Act* states:

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.

- [11] The Officer finds that the Landlord has not established, on a balance of probabilities, that the damage to the door was caused by an action or neglect of the Tenant or by a person permitted on the residential property by the Tenant. Therefore, the Officer is unable to find in the Landlord's favour in this matter.
- [12] The Officer finds that the Tenant is entitled to a return of the security deposit in the amount of \$250.00.

Conclusion

- [13] The Application is denied.
- [14] The Landlord shall return \$250.00 of the security deposit to the Tenant forthwith upon receipt of this Order.

IT IS THEREFORE ORDERED THAT

- A. The Application is denied.
- B. The Landlord shall return \$250.00 of the security deposit to the Tenant forthwith upon receipt of this Order.

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

(sgd.) Mitchell King

Mitchell King
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.