

Introduction

- [1] On July 28, 2023 the Landlords filed a *Landlord Application to Determine Dispute* (Form 2B) dated July 27, 2023 (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking to make claim against the security deposit and compensation for expenses incurred due to a contravention of the *Act* and/or tenancy agreement.
- [2] The Landlords are seeking **\$5,272.24** in total compensation, as part of the Application. All relevant documents (including the Notice of Hearing and Combined Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [3] On October 10, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing the Landlords. R.P., an authorized representative appeared, representing the Tenants.

Preliminary Comments

The Burden of Proof and the Applicant:

- [4] The Officer notes that on the Application, the Landlords argued that the Tenants initiated this proceeding and needed to present their case first at the hearing. The Landlord argued that the proceeding started because the Tenants did not want to settle their dispute, and that the Tenants rejected the Landlords' offer. The Officer quotes the Application as follows:

"Note that the tenant is initiating this dispute and therefore will need to present their case first at the hearing."

- [5] The Officer disagrees with the Landlords' position that this is the Tenants' responsibility or burden to prove its case. To be clear, the Application is the Landlords' application, and thus it is the Landlords' burden to prove each and every claim made in the Application.
- [6] The Tenants are not required at any point during or after the tenancy to enter into settlement talks, and are not required to accept any offers by the other party. Unless the parties agree in writing as it relates to claims against the security deposit, it is the Landlords' sole responsibility and obligation under the *Act* to make an application to the Rental Office. As a result, the Landlords are the applicants, they have the burden of proof, and the Landlord proceeded to present their case first at the hearing.

Presentation of Submissions and Evidence

- [7] With the presentation of evidence, the Landlord intended to go through each piece of documentary evidence submitted into evidence. At the beginning of the hearing the Landlord brought this intention to light and that his submissions and presentations would be lengthy. The Officer noted that the Landlords submitted 472 pages of documentary evidence.
- [8] The Officer advised the Landlord that such a presentation strategy was not necessary as all the evidence submitted is part of the record and reviewed during deliberations. The Officer suggested that the Landlord summarize his arguments and if needed, direct the Officer to the relevant pieces of evidence he wished examined during submissions. The Officer notes that the Landlord was not satisfied with this suggestion, however, the hearing proceeded and lasted just over two hours. The Officer finds that despite the Landlord not presenting his submissions exactly as he may have wished, the Landlord presented their case in full and with reasonable time to provide his arguments.

Additional Submissions and Opportunity to Review Evidence

- [9] Finally, the Officer notes that at the beginning of the hearing both parties brought up concerns as it relates to the Combined Evidence Package (a total of 492 pages). R.P., on behalf of the Tenants, had technical difficulties opening the evidence package through electronic means. The Landlord was unaware that the Combined Evidence Package included the 20 pages of evidence submitted by the Tenants. The Officer provided the parties an opportunity to provide additional submissions as it relates to the evidence they were not able to view at the time of the hearing. The Tenant provided a 2-page signed affidavit. The Landlords provided an 8-page written response.
- [10] The Officer is satisfied that the parties have had an opportunity to review all the documentary evidence on the record. Further, the parties have had the opportunity to provide full and adequate submissions and arguments, both orally and in writing, as it relates to the Application.

Issues to be Decided

- i. Are the Landlords entitled to retain the security deposit?
- ii. Are the Landlords entitled to compensation from the Tenants?

Summary of the Evidence

- [11] On August 1, 2013 the Landlords and the Tenants entered into a written fixed term tenancy agreement for the Residential Property. Each and every year until the Tenants vacated the parties renewed their fixed term agreement. Rent for the Residential Property was not disclosed. The Landlord argued it was "irrelevant". A security deposit of \$750.00 was required and paid.

Landlords' Evidence and Submissions

- [12] The Landlords submitted into evidence approximately 472 pages of documentary evidence, including numerous photographs of the Residential Property, invoices and receipts, an excel spreadsheet breaking down the direct costs and cleaning costs, and a British Columbia blog titled "*Normal Wear and Tear Vs. Damage: What's the Difference?*" Additionally, the Landlords included e-mail and text message conversations, a copy of the Schedule "D" of each tenancy agreement the parties entered into from June 27, 2013 to July 11, 2022. The Landlords submitted into evidence a *Landlord Condition Inspection Report* (Form 5) dated July 27, 2023. Finally, the Landlords provided to the Rental Office the physical baseboards, which damage is alleged. The Officer reviewed the physical evidence, but asked that the Landlords to take back possession of the baseboards.
- [13] The Landlord testified that after the initial walkthrough with the Tenants he found some damage which was beyond normal wear and tear. The Landlord testified that he spoke with another representative of the Tenants regarding compensation. After those conversations broke down, the Landlord did a more thorough inspection of the Residential Property and filed the Application. The Landlord testified that there was damage to the laminate flooring, the refrigerator, door trim, doors, general repairs, the Residential Property required cleaning, the oil tank was not filled and that due to improper notice, the Landlords incurred Maritime Electric expenses.
- [14] The Landlord testified that the damage to the laminate floors were caused by the Tenants' walkers and that they did not use protective pads on their furniture. The Landlord testified that he replaced the refrigerator because the shelf was damaged due to the Tenants' use of the refrigerator. The Landlord testified that he did have a conversation with the Tenant about not filling the oil tank because the Landlord intended to install heat pumps, however, the Landlord testified that the Tenants still had an obligation to compensate him for the oil tank fill up.

- [15] The Landlord testified that the Tenants did not provide 1-month written notice. Electricity is the responsibility of the Tenants. After the Tenants vacated the Landlords needed to put the electricity into their own name. The Landlord testified that the tenancy did not end until July 31, 2023. The Landlord testified that the Tenants are liable for the electricity up until that date. The Landlord submitted into evidence the Maritime Electric bill and apportioned the remaining days which the Tenant is responsible to pay. The Landlord testified that the Residential Property was below the standard of ordinary cleanliness. It took the Landlords approximately 31 hours to clean the Residential Property.

Tenants' Evidence and Submissions

- [16] The Tenants submitted into evidence photographs of the Residential Property and a signed affidavit. R.P. testified that the damage alleged by the Landlords is simply wear and tear, as the Tenants have lived in the Residential Property for ten years. R.P. testified that the Tenants are not responsible for the damage to the refrigerator. There was a crack in the shelf, the shelf is ten years old and the Tenants informed the Landlords of the crack when they first noticed it. R.P. testified that the Tenants' walkers would not have caused damage to the trim and that the Landlords were aware that the Tenants had walkers which they started using the past few years.
- [17] R.P. testified that the Tenants cleaned the Residential Property over numerous days. R.P. testified that the Tenants were asked by the Landlord to not fill the oil tank. The Tenants in their signed affidavit state that the Landlord asked them not to fill the oil tank, and were surprised when the Landlord requested the money to fill the oil tank. The Tenants in the signed affidavit dispute the alleged damage and describe it as normal wear and tear. The Tenants lived in the Residential Property for 10 years with very little to no updates to the Residential Property from the Landlord.

Analysis

- [18] The Officer begins by referencing the relevant law for the Application. Subsections 40.(1) and (3) of the Act states:

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.*

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.*

- [19] Further, the Officer references subsections 28.(3), (4) and (5) of the Act, which states:

Tenant responsible for ordinary cleanliness

A tenant is responsible for

- (a) Ordinary cleanliness of the rental unit and all areas of the residential property used exclusively by the tenant, except to the extent that the tenancy agreement expressly requires the landlord to clean it; and*
- (b) Proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.*

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.

- [20] The Officer makes comment that in such matters where there is a dispute over the security deposit, it is the landlord's burden or onus to prove, on a balance of probabilities, any and all claims made against the security deposit.
- [21] The Officer notes that the Landlords are claiming \$5,272.24 in damages and cleaning expenses. The Application is seeking to retain the entire amount of the Tenants' security deposit to cover the alleged expenses, and additional expenses above the security deposit and interest. The Officer's findings for each claim are as follows.

Cleaning / General repairs expenses - \$620.00

- [22] The Officer finds that the testimony of the parties disputed the state of cleanliness of the Residential Property. The documentary evidence, specifically, the photographs submitted by the Landlords, establish that the overall state of the Residential Property is below what the Officer would find to be ordinarily clean. The Landlords submitted into evidence a cost breakdown to assist in quantifying the costs associated with each claim. The Officer finds that \$20.00/hour is an appropriate amount to expense in this case. However, the Officer notes that the total hours disclosed by the Landlords of 31 hours included painting, sanding and general repairs to the Residential Property's walls. The Officer finds that such work generally falls into the category of normal wear and tear. In this case, the Officer finds that the evidence does not establish that the painting, sanding and general repairs to the walls of the Residential Property is beyond normal wear and tear for a tenancy of 10 years.
- [23] As the Officer does not have an exact breakdown of the hours which the Landlords allocated to cleaning and painting the Officer adjusts the calculated hours to 15 hours. Therefore, the Officer finds that the claim is allowed in part and the Landlords are entitled to **\$300.00** in cleaning expenses.

Damage to the flooring - \$2,316.28

- [24] The Officer finds that the Landlords' evidence, specifically, the photographs of the floor and the comments made by the professional at Wall2Wall (page 52 of the Combined Evidence Package) provides sufficient evidence that the damage to the rental unit's floors are beyond normal wear and tear. Further, the Officer notes that the evidence suggests that the damage to the floor requires a replacement and not a simple repair to remedy the damage.
- [25] The Landlords submitted into evidence a cost breakdown to assist in quantifying the costs associated with each claim. The Landlords claim \$2,316.28 in total as it relates to the living room laminate flooring. However, the Officer finds that some of these costs are associated with travel costs. The Officer finds that such travel expenses are not appropriate to expense on the Tenants. The Officer allows the Flooring Invoice in the amount of \$1,149.09. The Officer allows the Wall2Wall invoice in the amount of \$747.00. The Officer allows the reinstall of the baseboards in the amount of \$50.00, and the painting of the baseboards in the amount of \$40.00. The Officer allows the \$24.00 disposal fee, and the \$13.00 expense for caulking. The Officer allows the \$100.00 fee for the Landlord to install T-molds. Therefore, the Officer finds that the claim is allowed in part and the Landlords are entitled to **\$2,123.78** in expenses to the flooring and associated costs.

Replacement of the Refrigerator - \$1,022.49

- [26] The Officer finds that the evidence and testimony of the parties suggests that the refrigerator is approximately 10 years old. Further, the evidence suggests that the refrigerator was in working condition at the end of the tenancy agreement. The evidence suggests that the refrigerator had cracks to the shelf, which the Tenant duct taped sometime during the tenancy. The Officer finds that the Landlords have not provided sufficient evidence to establish that the Tenants caused this damage through deliberate actions or by neglect. Further, the Officer finds that after 10 years, the Landlords have not provided sufficient evidence to persuade the Officer that the damage to the refrigerator was beyond normal wear and tear. Therefore, the claim is denied.

Door Trim - \$537.00

- [27] The Officer finds that the Landlords have provided sufficient evidence to establish that the damage to the door trim is beyond normal wear and tear. The Officer relies specifically on the photographic evidence demonstrating the damage to the door trim. However, the Officer finds that the Landlords submitted into evidence a cost breakdown to assist in quantifying the costs associated with each claim. In the costs associated with this claim there are travel costs and painting costs, which the Officer finds are not appropriate to claim against the Tenants and that the painting costs associated with such work is not beyond what would normally be expected to be replaced at the end of a 10-year tenancy. The Officer allows the \$157.24 cost associated with the invoice. The Officer allows the \$60.00 cost associated with the removal of trim. The Officer allows \$60.00 associated with installing the new trim. Therefore, the Officer finds that the claim is allowed in part and the Landlords are entitled to **\$277.24** in expenses to the door trim.

Residential Property Door Stop/Swaps - \$163.81

- [28] The Officer finds that the Landlords have provided sufficient evidence to establish that the damage to the door stops/swaps is beyond what would be considered normal wear and tear. The Officer finds that the Landlords submitted into evidence a cost breakdown to assist in quantifying the costs associated with each claim. The Officer allows the claim in part, deducting travel expenses, and allowing an amount of **\$143.81**.

Kitchen Sink Strainer / Toilet seats / Ceiling vent - \$213.54

- [29] The Officer finds that the Landlords' evidence, specifically the photographic evidence, does not establish that the costs associated to this claim should be the Tenants' responsibility. The evidence suggests that the damage is not beyond normal wear and tear after ten years of tenancy. The claims are denied.

Oil Tank Top up - \$327.05

- [30] The Officer notes that the Landlords submitted into evidence the invoice to top up the Residential Property's oil tank. Also, the Landlords submitted into evidence a photograph of the oil meter on the tank dated July 20, 2023. The Landlord testified that it is the Tenants' responsibility in the tenancy agreement to fill the tank up before vacating.
- [31] The Officer heard testimony from the parties regarding the Landlord requesting to the Tenant *not* to fill the oil tank before the Tenants vacated. This was characterized through oral submissions from the Landlord and R.P., and corroborated in the Tenants' signed affidavit. The Officer notes that the Landlord argued that the Tenant was still required to compensate the Landlord, despite his request. The Officer disagrees with the Landlord's argument. The Officer finds that a reasonable person, in this case, the Tenant, would not expect to have to provide monetary compensation to the Landlord after being asked to not fulfil an obligation in the tenancy agreement. Rather, a reasonable person, in such a circumstance, would conclude that the Landlord absolved them of such a requirement and would not then seek compensation later. Further, the Officer finds that there is no evidence before the Officer to conclude that the Landlord disclosed, or the parties agreed at the time, that the Tenant would still compensate the Landlord for a future top up fill of the oil tank. The claim is denied.

Maritime Electric Expense until July 31, 2023 - \$71.83

- [32] The Landlords argued that the Tenants did not provide proper notice and vacated July 17, 2023. The Landlord argued that he had to put the electricity into his own name and incurred an expense. The Officer finds that the Landlords are entitled to this claim. The Officer finds that the evidence suggests that the Tenants did vacate the Residential Property without providing the required 1-month notice. Therefore, the tenancy agreement would not have terminated until July 31, 2023. The Landlord provided an invoice and prorated the amount to account for the remaining days up to July 31, 2023. The Officer allows this claim in the amount of **\$71.83**.
- [33] The Officer finds that sub-subsection 85.(1)(d) of the *Act* states:

85. Power of the Director

- (1). *After hearing an application, the Director may make an order*
- (d) *requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.*

- [34] The Officer finds that the Landlords have established that they have incurred expenses as a result of the Tenants contravening subsections 28.(3) and (4) of the *Act*. The Landlords are entitled to compensation in the amount of \$2,916.66. The Officer finds that the Landlords have established a valid claim against the Tenants' security deposit and interest. Therefore, the Officer deducts the entire security deposit and accrued interest to offset the amount of compensation owed. The Application is allowed and the Officer's calculations are as follows:

Item	Amount
Cleaning	\$300.00
Flooring	\$2,123.78
Door Trim	\$277.24
Door Stop/Swaps	\$143.81
Maritime Electric	\$71.83
Total Compensation	\$2,916.66
Less Security Deposit	(\$750.00)
Less Interest (08/ 01/13 – 10/30/23)	(\$74.96)
Less Total amount	(\$824.96)
Award to Landlords	\$2,091.70

Conclusion

[35] Section 14.(9) of the *Act* states:

Interest rate

A landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord.

[36] The Officer adjusts the interest accrued to the date this Order is issued.

[37] The Landlords shall retain the security deposit and accrued interest in the amount of \$824.96 to offset the compensation award in this Order.

[38] The Tenants shall pay the Landlords \$2,091.70 on or before December 1, 2023.

[39] **Order LD23-499 was served to the parties by ordinary mail on October 30, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall retain the security deposit and accrued interest in the amount of \$824.96 to offset the compensation award in this Order.
- B. The Tenants shall pay the Landlords \$2,091.70 on or before December 1, 2023.

DATED at Charlottetown, Prince Edward Island, this 30th day of October, 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.