

Introduction

- [1] On August 9, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2B) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking to make claim against the security deposit and compensation for rent owing, and expenses incurred due to a contravention of the *Act* and/or tenancy agreement.
- [2] The Landlord is seeking **\$10,848.90** in total compensation, as part of the Application. All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [3] On October 24, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Representative appeared on behalf of the Landlord. The Tenant did not appear.

Issues to be Decided

- i. Is the Landlord entitled to retain the security deposit?
- ii. Is the Landlord entitled to rent owed and/or compensation from the Tenant?

Summary of the Evidence

- [4] On December 1, 2021 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. The fixed term converted to a month-to-month agreement. Rent was \$1,887.69 due on the first day of the month. A security deposit of \$1,869.00 was paid.

Landlord’s Evidence and Submissions

- [5] The Landlord submitted into evidence 36 pages of documentary evidence, including copies of invoices, photographs of the Residential Property and a list of the alleged damage caused by the Tenant.
- [6] The Representative testified that the Tenant abandoned the Residential Property. The Representative testified that on August 4, 2023 she stopped by the Residential Property after numerous failed attempts to contact the Tenant. The Representative testified that when she arrived at the Residential Property, the locks were broken, there was significant damage, and some personal belongings of the Tenant left behind. The Representative testified that the photographs submitted into evidence were taken by her on August 4, 2023. The Representative testified that there were holes in the walls, missing doors, dents and damage throughout the Residential Property. The Representative testified that the damage is beyond normal wear and tear and it cost over \$7,000.00 to repair, remedy and replace.
- [7] The Representative testified that the Tenant did not pay July 2023 rent, and did not provide any notice before abandoning the Residential Property. The Representative testified that the Landlord lost August 2023 rent as well. The Representative testified that the Tenant owes July 2023 rent in the amount of \$1,887.69 and due to improper notice August 2023 rent in the amount of \$1,887.69.
- [8] The Landlord is seeking to retain the security deposit and interest to compensate for the outstanding rent and damage to the Residential Property. The Landlord is also seeking compensation for the damage caused by the Tenant.

Tenant’s Evidence and Submissions

- [9] The Tenant did not submit any evidence or submissions for the Application. The Tenant did not participate at the hearing.

Analysis

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

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.*

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

28. Tenant responsible for ordinary cleanliness

- (3.) *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

- (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.*

- [12] The Officer comments that in such matters where there is a claim against 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.

- [13] The Officer notes that the Landlord is claiming \$7,073.52 in cleaning and damages to the Residential Property. The Application is seeking to retain the entire amount of the Tenant's security deposit to cover the alleged expenses and additional expenses above the security deposit and interest. Further, the Landlord is seeking compensation for two months' rent (July and August 2023) in the amount of \$3,775.38. The Officer's findings are as follows, and notes that sub-subsection 85.(1)(d) of the Act states:

85. Powers 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 expenses incurred as a result of a contravention of this Act or the tenancy agreement.*

Damages and Cleaning the Residential Property - \$7,073.52

- [14] The Officer finds that the Landlord's evidence, specifically, the photographs of the Residential Property taken August 4, 2023 provides sufficient evidence that the damage is beyond normal wear and tear. The Officer finds that the Landlord provided evidence to assist in quantifying the expenses incurred due to the Tenant's damage. Further, the Officer finds that the Residential Property was left in a condition below ordinarily clean. The Officer finds that the Landlord's claim is allowed in the amount of \$7,073.52.

Outstanding rent for July & August 2023 - \$3,775.38

- [15] The Officer finds that the Landlord, through witness testimony, has provided sufficient evidence that the Tenant has rent outstanding. The Officer finds that the Tenant did not pay July 2023 rent, and sometime before August 4, 2023 abandoned the Residential Property without notice. The Officer finds that the Tenant did not provide sufficient notice as required by the Act and that the Landlord was unable to rent the Residential Property for August 2023 due to the insufficient notice and required repairs. The Officer finds that the claim is allowed in the amount of \$3,775.38.
- [16] The Officer finds that the Landlord has established that she has incurred expenses as a result of the Tenant contravening subsections 28.(3) and (4) of the Act. The Landlord is entitled to compensation in the amount of \$10,848.90. The Officer finds that the Landlord has established a valid claim against the Tenant's 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
Damage & Cleaning	\$7,073.52
Outstanding Rent (July / August 2023)	\$3,775.38
Total Compensation	\$10,848.90
Less Security Deposit	(\$1,869.00)
Less Interest (12/01/21 – 11/06/23)	(\$40.08)
Less Total amount	(\$1,909.08)
Award to Landlord	\$8,939.82

Conclusion

- [17] 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.

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

- [19] The Landlord shall retain the security deposit and accrued interest in the amount of \$1,909.08 to offset the compensation award in this Order.
- [20] The Tenant shall pay the Landlord \$8,939.82 on or before November 30, 2023.
- [21] **Order LD23-508 was served to the parties by e-mail on November 6, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the security deposit and accrued interest in the amount of \$1,909.08 to offset the compensation awarded in this Order.
- B. The Tenant shall pay the Landlord \$8,939.82 on or before November 30, 2023.

DATED at Charlottetown, Prince Edward Island, this 6th day of November, 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.