

Introduction

- [1] On August 17, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2B) (the “Application”) with the Residential Tenancy Office (the “Rental Office”), seeking the following remedies.

To request an order directing my tenant to pay outstanding rent; and

To make a claim against the security deposit.

- [2] The Landlord is seeking \$1,026.00 in outstanding rental arrears for July and August 2023. The Landlord is additionally seeking to retain the entirety of the security deposit for damage caused by the Tenant to the rental unit.
- [3] On August 17, 2023, the Landlord served the Tenant with the Application by text message and posting it on the Tenant’s door.
- [4] On October 24, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlord participated in the hearing. The Tenant did not participate in the hearing. The Tenant advised the Rental Office by email on September 21, 2023, that he would not participate in the hearing.

Issues to be Decided

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

Summary of the Evidence

- [5] Prior to the Landlord’s acquisition of the Residential Property on July 31, 2019, the Tenant and a previous landlord entered into a verbal month-to-month tenancy agreement. The Residential Property is a single unit of a six-unit apartment building. Rent was \$826.00 due on the first day of the month. A security deposit was required and paid. The total amount of the security deposit and accrued interest as of the Landlord’s purchase of the Residential Property on July 31, 2019 was \$507.10.

Landlord’s Evidence and Submissions

- [6] The Landlord testified that the Tenant vacated the rental unit on August 31, 2023. The Landlord testified that the Tenant did not pay \$200.00 of rent for July 2023, and did not pay any of the \$826.00 in rent owing for August 2023. The Landlord testified that he is seeking \$1,026.00 in rent owing from the Tenant.
- [7] The Landlord testified that the Residential Property was left in an unclean state, with significant damage. The Landlord submitted into evidence photographs displaying the condition of the rental unit. The Landlord testified that various items were left throughout the rental unit, including children’s toys, garbage, and furniture. The Landlord further testified that the Tenant broke a window and broke the rental unit’s refrigerator. The Landlord testified that food was left in the broken refrigerator which decomposed. The Landlord testified that he attempted to repair the refrigerator but the damage made it unsalvageable. The Landlord submitted a copy of a receipt, dated October 3, 2023, for a used replacement refrigerator in the amount of \$460.00.
- [8] The Landlord submitted copies of text message exchanges with the Tenant. In the messages the Tenant responds aggressively to the Landlord, threatens to break through the rental unit’s door, and acknowledges being behind on rent.

- [9] The Landlord testified he rented a dumpster to dispose of the Tenant's personal items which were abandoned in the rental unit. The Landlord testified that he disposed of a variety of items including the broken refrigerator, the Tenant's furniture, expired food, and children's toys. The Landlord submitted a receipt for the dumpster rental, dated September 30, 2023, totaling \$827.31.
- [10] The Landlord further submitted a record from the purchase of the Residential Property on July 31, 2019, which showed that the total amount of the security deposit and accrued interest as of that day was \$507.10.

Tenant's Evidence and Submissions

- [11] The Tenant did not appear at the hearing and did not provide any testimony. The Tenant did not submit any evidence.

Analysis

Issue i: Is the Landlord entitled to rent owed from the Tenant?

- [12] The Officer notes that the Landlord is seeking an order directing payment of rent for the months of July and August 2023, pursuant to sub-subsection 85.(1)(b) of the Act which states:

85. Powers of the Director

- (1) *After hearing an application, the Director may make an order*
- (b) *directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord.*

- [13] The Officer finds that based on the totality of the evidence, the Tenant has failed to pay rent owing to the Landlord. The Officer notes the Landlord's rent ledger shows that there is \$200.00 owing for the month of July 2023, and the full \$826.00 owing for the month of August 2023. Therefore, the Officer finds that the Tenant owes a total of \$1,026.00 in rent for the months of July and August 2023. The Officer notes that tenants are not permitted to withhold rent unless the tenants have an express right under the Act to deduct or withhold all or a portion of the rent.
- [14] The Officer's calculations are as follows:
- \$200.00 outstanding for July 2023 rent; and
 - \$826.00 outstanding for August 2023 rent.
- [15] The Officer finds that the Tenant owes the Landlord \$1,026.00 in rental arrears.

Issue ii: Is the Landlord entitled to retain the security deposit?

- [16] The Officer notes that subsections 40.(1), (2) 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.*

[17] Further, the Officer notes that subsections 28.(4) and (5) of the Act state:

28. 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.*

[18] The Officer notes 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 of \$507.10 plus \$19.25 in accrued interest as of the date of this Order, November 6, 2023. The total amount of the security deposit in question is \$526.35.

[19] The Officer finds that the Landlord has established a valid claim to retain the entirety of the security deposit and interest. The Officer finds that the Landlord has provided sufficient evidence to establish that the damage to the Residential Property is beyond normal wear and tear. The Officer notes the undisputed testimony of the Landlord and the photographs depicting the rental unit in an unclean state beyond the standard of normal wear and tear. The Officer further notes the receipts submitted into evidence for a dumpster rental and replacement of the rental unit's refrigerator.

[20] The total claim against the security deposit is above the total amount of the security deposit. Therefore, the Landlord is entitled to retain the entirety of the security deposit plus interest in the amount of \$526.35.

Conclusion

- [21] The Application is allowed.
- [22] The Tenant shall pay the Landlord \$1,026.00 forthwith for outstanding rent.
- [23] The Landlord shall retain the security deposit and accrued interest in the amount of \$526.35.
- [24] **Order LD23-510 was served on the parties by e-mail on November 6, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Tenant shall pay the Landlord \$1,026.00 forthwith for outstanding rent.
- B. The Landlord shall retain the security deposit and accrued interest in the amount of \$526.35.
- C. A certified copy of Order LD23-510 may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 6th day of November, 2023.

(sgd.) Colin Trewin

Colin Trewin
Residential Tenancy Officer

NOTICERight 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.