

Introduction

- [1] On July 25, 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 claim against the security deposit.

- [2] On July 25, 2023, the Application was served on the Tenants by email.
- [3] On October 3, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord, and both Tenants ("G.N." and "M.C.") participated in the hearing.

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 Tenants?

Summary of the Evidence

- [4] On September 15, 2022, the Tenants entered into a written fixed term tenancy agreement from September 15, 2022, to April 15, 2023, for the Residential Property. The Residential Property is a single detached house. Rent was originally \$2,800.00 due on the fifteenth day of the month. The Landlord then agreed to lower the rent to \$2,500.00 per month from December 15, 2022 onward. A security deposit of \$2,800.00 was required and paid.

Landlord's Evidence and Submissions

- [5] The Landlord submitted into evidence 121 pages of documentary evidence, including copies of receipts, invoices, email and text message exchanges with the Tenants, and photographs of the rental unit.
- [6] In Order LD23-293, dated June 30, 2023, the Tenants were ordered to vacate the Residential Property by July 7, 2023. The Landlord testified that the Tenants vacated the Residential Property on July 4, 2023. The Landlord testified that the Tenants owe rent, and that the Tenants left the Residential Property in a damaged and unclean condition for which he is claiming costs against the security deposit.
- [7] The Landlord testified that there was extensive damage to the rental unit which cost him well in excess of the amount of the security deposit. The Landlord testified that nearly every room of the rental unit had drywall damage, numerous doors were damaged, a showerhead had to be replaced, a kitchen sink faucet needed to be replaced, bathroom vanities and kitchen cabinets had to be repaired, and the rental unit required extensive cleaning to restore it to a reasonable condition. The Landlord provided extensive photographic evidence of the condition of the rental unit prior to the Tenants moving in, as well as the condition after the Tenants vacated the rental unit.
- [8] The Landlord testified that he and his partner spent a significant amount of time restoring the condition of the Residential Property, which included repairing damage to drywall, lawn maintenance, replacing rental unit fixtures, disposing of trash bags at the Island Waste Management Corporation facility, and extensive cleaning.

- [9] The Landlord submitted a move-in inspection report of the Residential Property, signed by the Tenants. The inspection report lists a variety of minor defects with the rental unit. The Landlord submitted that he did not perform the inspection with the Tenants as they arrived late on the day they were supposed to move in. The Landlord testified that he picked up the inspection report in December 2022 and it was signed by the Tenants. The Landlord denied telling the Tenants that looking for other damage to the rental unit was unnecessary.
- [10] The Landlord testified that he was forced to pay for storage for his household items due to the Tenants occupying the Residential Property past the original vacate date. The Landlord testified that the Tenants were given a notice of termination on January 6, 2023, to vacate the Residential Property by April 15, 2023, for personal occupation by the Landlord. The Tenants did not vacate by that date. The Tenants were then ordered to vacate the rental unit by July 7, 2023, in Order LD23-293. The Landlord submitted four storage company receipts from April 2023 to July 2023 which totaled \$794.26.
- [11] The Landlord testified that he incurred the following costs which he is claiming against the security deposit:
- \$794.26 for Landlord storage costs incurred by the Tenants occupying the Residential Property past the vacate date;
 - \$600.00 for 24 hours spent repairing drywall;
 - \$400.00 for 16 hours spent performing additional cleaning;
 - \$340.50 for professional cleaning;
 - \$114.99 for a new sink faucet;
 - \$75.00 for three hours spent performing lawn care;
 - \$25.00 for an hour spent replacing the kitchen sink faucet;
 - \$50.00 for two hours spent collecting and disposing of garbage bags at the Island Waste Management Corporation facility;
 - \$50.00 for fees to dispose of Tenants' garbage at the Island Waste Management Corporation facility;
 - \$36.79 for a new showerhead;
 - \$12.50 for a half-hour spent replacing the showerhead;
 - \$25.00 for an hour spent repairing bathroom vanities;
 - \$25.00 for an hour spent repairing kitchen cabinets;
- [12] The Landlord testified that he is also seeking \$5,000.00 in rent owing from the Tenants. The Landlord testified that the Tenants were repeatedly late making rent payments. The Landlord testified that he had numerous conversations with the Tenants regarding late rent payments. The Landlord further testified that he voluntarily lowered the rent from \$2,800.00 to \$2,500.00 on December 15, 2022, to help the Tenants make payments. The Landlord testified that while there was still rent owing prior to May of 2023, he is only seeking an order for rent owing for the months of May and June of 2023, in the amount of \$5,000.00. The Landlord submitted a rent ledger showing payments from the Tenants from September 2022 to April 2023 and nothing was paid for May and June 2023.

Tenants' Evidence and Submissions

- [13] The Tenants submitted that the cupboards in the kitchen were in the same state as when they moved in. The Tenants submitted that there had already been drywall damage in the rental unit prior to when the Tenants moved in.
- [14] The Tenants argued that the garage door, door handles, and kitchen sink faucet broke from regular wear and tear.

- [15] The Tenants argued that a walk-through was never performed with the Landlord prior to moving into the rental unit. The Tenants submitted that the Landlord told them that it was unnecessary to look for other damage and to sign the inspection report and give it back.
- [16] The Tenants argued that they should not be responsible for lawn care costs as they were not responsible for lawn maintenance under the tenancy agreement.

Analysis

- [17] The Officer notes that subsections 40.(1), (2) and (3) of the Act state:

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.*

Landlord may retain amount from security deposit

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

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.*

- [18] Further, the Officer notes that subsections 28.(3), 28.(4), 28.(5), 74.(1), and sub-subsections 85.(1)(b) and 85.(1)(d) of the Act state:

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.

74. Landlord entitled to compensation

(1) A landlord is entitled to compensation for a former tenant's use and occupation of the rental unit after the tenancy has been terminated.

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.

(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.

[19] 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 \$2,800.00, plus \$59.45 in accrued interest as of the date of the order, November 6, 2023. The total amount of the security deposit in question is \$2,859.45.

[20] The Officer notes that the Landlord is claiming the entirety of the security deposit and accrued interest in storage fees, cleaning, and damages to the Residential Property. Further, the Landlord is seeking compensation for two months' rent (May and June 2023) in the amount of \$5,000.00.

Damages, Storage, and Cleaning the Residential Property

[21] The Officer finds that the Landlord has established a valid claim in the amount of \$2,474.04 against the security deposit and interest. The Officer finds that the photographs provided by the Landlord indicate that the damage and state of uncleanliness within the Residential Property is beyond normal wear and tear. The Officer finds that the number of hours spent repairing and cleaning the Residential Property is reasonable given the photographic and testimonial evidence of the Landlord. The Officer also notes the receipts provided by the Landlord for replaced items within the rental unit and for disposal of garbage left at the Residential Property.

[22] The Officer notes that the Landlord cannot recover lawn care expenses as lawn maintenance was not a responsibility of the Tenants under the tenancy agreement and the Landlord is unsuccessful in this claim.

[23] The Officer further finds that the Landlord is entitled to recover storage costs incurred due to the Tenants overholding the Residential Property, pursuant to subsection 74.(1) of the Act. The Officer notes storage receipts provided by the Landlord for the duration of the period in which the Tenants were overholding the Residential Property.

- [24] The Officer's calculations for the Landlord's recovery against the security deposit and accrued interest are as follows:

- \$794.26 for storage costs;
- \$600.00 for 24 hours spent repairing drywall;
- \$400.00 for 16 hours spent performing additional cleaning;
- \$340.50 for professional cleaning;
- \$114.99 for a new sink faucet;
- \$25.00 for an hour spent replacing the kitchen sink faucet;
- \$50.00 for two hours spent collecting and disposing of garbage;
- \$50.00 for fees to dispose of Tenants' garbage;
- \$36.79 for a new showerhead;
- \$12.50 for a half-hour spent replacing the showerhead;
- \$25.00 for an hour spent repairing bathroom vanities;
- \$25.00 for an hour spent repairing kitchen cabinets;

Total: \$2,474.04

Outstanding rent for May & June 2023 - \$5,000.00

- [25] The Officer finds that the Landlord, through witness testimony and the submission of a rental ledger into evidence, has provided sufficient evidence that the Tenants have rent outstanding. The Officer finds that the Tenants did not pay rent for May and June 2023. The Officer finds that the claim is allowed in the amount of \$5,000.00. 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.
- [26] The Officer finds that the Landlord has established that he has incurred expenses as a result of the Tenants contravening subsections 28.(3) and (4) of the Act. The Landlord is entitled to compensation in the amount of \$7,474.04. The Officer finds that the Landlord has 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
Damages, Storage, & Cleaning	\$2,474.04
Outstanding Rent (May / June 2023)	\$5,000.00
Total Compensation	\$7,474.04
Less Security Deposit	(\$2,800.00)
Less Interest (9/15/22 – 11/06/23)	(\$59.45)
Less Total amount	(\$2,859.45)
Award to Landlord	\$4,614.59

Conclusion

- [27] The Application is allowed in part.
- [28] The Landlord shall retain the security deposit and accrued interest in the amount of \$2,859.45 to offset the compensation award in this Order.
- [29] The Tenants shall pay the Landlord \$4,614.59 on or before November 30, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the security deposit and accrued interest in the amount of \$2,859.45 to offset the compensation award in this Order.
- B. The Tenants shall pay the Landlord \$4,614.59 on or before November 30, 2023.

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