

Introduction

- [1] On September 10, 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.
- [2] The Landlord is making a claim to retain a portion of the security deposit in the amount of **\$1,358.61**. 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 November 7, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing themselves with a witness. The Tenants did not appear.

Issue to be Decided

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

Summary of the Evidence

- [4] On September 1, 2023 the Landlord and the Tenants entered into a written fixed term tenancy agreement for the Residential Property. Rent was \$2,100.00 due on the first day of the month. A security deposit of \$2,100.00 was required and paid.

Landlord's Evidence and Submissions

- [5] The Landlord submitted 45-pages of documentary evidence, including photographs of the Residential Property, copies of text messages and emails between the parties, invoices/receipts and an expense breakdown.
- [6] The Landlord testified that the Tenants vacated the Residential Property on August 31, 2023. The Landlord testified that when the Tenants vacated, the Residential Property was not sufficiently cleaned. The Landlord testified that he hired cleaners to clean the Residential Property as much of the appliances and furniture provided were not cleaned. The Landlord testified that garbage was not properly organized and/or removed. The Landlord testified that some minor repairs were also required. The Landlord testified that he is making a claim against the security deposit in the amount of \$1,358.61 and returned the remaining \$792.49 balance to the Tenants by e-transfer on September 15, 2023 (evidence was submitted to verify this transaction).
- [7] The Witness testified that she is the property manager and that she witnessed the condition of the Residential Property when the Tenants vacated. The Witness testified that she took the photographs submitted into evidence on August 31, 2023 and September 1, 2023. The Witness testified that she communicated with the Tenants before they vacated regarding needing to clean the Residential Property.

Tenants' Evidence and Submissions

- [8] The Tenants did not submit any evidence nor submissions for the Application. The Tenants did not participate at the hearing.

Analysis

- [9] The Officer begins by referencing the relevant law for the Application. Subsection 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.*

- [10] Further, the Officer refers to subsections 28.(3), (4) and (5) of the Act stating:

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.*

- [11] 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.

Cleaning and Repairs - \$1,358.61

- [12] The Officer find that the Landlord's evidence, specifically, the photographs and direct testimony from the Witness provides sufficient proof that the Residential Property was below ordinary cleanliness. Further, the Officer finds that the Landlord has provided sufficient evidence to quantify his expenses. Therefore, the claim is allowed in the amount of \$1,358.61. The Application is allowed and the Officer's calculations are as follows:

Item	Amount
Damage & Repairs	\$1,358.61
Less Security Deposit	(\$2,100.00)
Less Interest (09/01/20 – 11/08/23)	(\$51.10)
Less Total Amount	(\$2,151.10)
Less Amount Returned to Tenants	(\$792.49)
Total Award to Landlord	\$1,358.61

Conclusion

- [13] The Application is allowed.
- [14] The Landlord shall retain a portion of the security deposit in the amount of \$1,358.61. The remaining balance of the security deposit was returned to the Tenants.
- [15] **Order LD23-518 is served to the parties by e-mail on November 8, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain a portion of the security deposit in the amount of \$1,358.61.

DATED at Charlottetown, Prince Edward Island, this 8th 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.