

Introduction

- [1] On May 1, 2023, the Landlords filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking:
- To make a claim against the security deposit.*
- [2] On August 8, 2023, a teleconference hearing was scheduled to be held before a Residential Tenancy Officer (the "Officer") and only the Landlord called into the hearing. At the start of the hearing the Officer could not determine if the Tenant had been properly notified of the Application or the hearing. The Landlord was notified the matter would not proceed until the Rental Office was satisfied the Tenant had been properly notified.
- [3] On October 4, 2023, the Rental Office spoke with the Tenant and he indicated he wished to dispute the Application. The hearing was rescheduled and held before the Officer on October 26, 2023. The Landlord, the Landlord's translator, the Tenant, and the Tenant's translator participated.
- [4] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the Act.

Issue to be Decided

- i. Are the Landlords entitled to retain all or part of the security deposit?

Summary of the Evidence

- [5] On September 1, 2022, the Tenant and the Landlords entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property consisted of a room in a single-family house. Rent was \$900.00 per month due on the first day of the month. A security deposit of \$1,500.00 was paid. The Tenant vacated the Residential Property on April 29, 2023.

Landlords' Evidence and Submissions

- [6] The Landlord stated she wishes to retain the security deposit as the Tenant damaged a tub tile and a floor tile in the Tenant's master bathroom suite. Photographs of the damaged tiles were submitted into evidence. The Landlord stated the parties discussed having the Tenant repair the broken tiles and then the Tenant would receive the damage deposit back. The Landlord stated the Tenant did not repair the tiles and the Tenant did not agree with the quote the Landlord received to fix the tiles. A copy of the quote in the amount of \$1,380.00 was submitted into evidence.
- [7] The Landlord stated the Tenant lived in a different room in the house prior to September 1, 2022. The Tenant signed an updated tenancy agreement when the Tenant moved into the master bedroom which stated only the Tenant would use the master bathroom. The Landlord stated the master bathroom door was locked and was not accessible to anyone prior to September 1, 2022. The Landlord stated there were no damaged tiles when the Tenant moved into the master bedroom as the bathroom had been recently renovated.

Tenant's Evidence and Submissions

- [8] The Tenant stated he did not damage the tiles. The Tenant stated other occupants in the house had access to the master bathroom prior to September 1, 2022. He stated he did not observe any damaged tiles when he moved into the master bedroom, but he stated there was a mat on the floor on top of the place where the damaged floor tile was discovered.

- [9] The Tenant stated he was overcharged for the security deposit. He stated he paid the Landlord \$1,500.00 for the security deposit but rent was only \$900.00. The Tenant stated the Landlord did return the \$600.00 overpayment, but only after the Tenant agreed to fix the broken tiles. The Tenant stated agreeing to fix the tiles was the only way he could get the overpayment returned to him. The Tenant stated he obtained less costly estimates to repair the tiles and he would submit the estimates after the hearing.

Post Hearing Evidence and Submissions

- [10] After the hearing, the Landlord submitted a second quote she had obtained for repairing the tiles. The quote was for \$1,794.00. The Landlord submitted a copy of a text message from September 1, 2022, between the Tenant and Landlord. In the message the Landlord advised the Tenant that the Landlord would unlock the master bathroom door and provide the Tenant a key for the bathroom.
- [11] The Tenant was asked to provide any additional submissions or evidence by October 30, 2023. On November 3, the Tenant provided a quote from a person on Kijiji who stated they could repair the tiles for "around \$200.00" and the Tenant would need to "get grout and tiles." The Tenant submitted that they "visited a tile store and found that the majority of tiles were priced below \$50."

Analysis

Issue i: Are the Landlords entitled to retain all or part of the security deposit?

- [12] The Officer begins by referencing the relevant law for the Application. Section 40 of the *Act* states:

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.*

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

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.*

- [14] The Tenant stated he overpaid the security deposit by \$600.00, but that amount has since been returned to the Tenant. Therefore, the Officer is only required to make a determination on the remaining amount of the security deposit of \$900.00.

- [15] 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.
- [16] The Officer finds that the Landlords have established a valid claim to retain the full amount of the security deposit in the amount of \$900.00. The Officer finds that the Landlords have provided sufficient evidence, specifically the submitted photographs and estimates, to establish that the damage to the bathroom is beyond normal wear and tear.
- [17] Both parties stated no damaged master bathroom tiles were observed when the Tenant moved into the master bedroom. The Landlord stated the bathroom had recently been renovated, the bathroom door was locked, and no tiles were damaged prior to giving the Tenant access to the master bathroom. The Landlord received quotes for \$1,380.00 and \$1,794.00 to repair the tiles, both of which exceed the amount of the security deposit.
- [18] The Tenant submitted that he received a quote of \$200.00 for labour to fix the tiles if the Tenant provided the materials. However, the Officer notes that the Landlords are not obligated to hire an unknown tradesperson just because the Tenant provided a lower quote to make the repairs.
- [19] 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.

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

Security Deposit	\$900.00
Interest (Sept. 1/22 – Nov. 8/23)	\$19.98
Award to Landlords	\$919.98

Conclusion

- [21] The Application is allowed.
- [22] The Landlords shall retain the security deposit in the amount of \$919.98.

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall retain the security deposit in the amount of \$919.98.

DATED at Charlottetown, Prince Edward Island, this 8th day of November, 2023.

(sgd.) Mitchell King

Mitchell King
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.