

Introduction

- [1] On October 11, 2023, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2B) dated July 27, 2023 (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking to make claim against the security deposit.
- [2] The Landlord is seeking to retain the entirety of the security deposit and accrued interest. All relevant documents were properly served in accordance with subsection 100.(1) of the *Act*.
- [3] On November 2, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A representative for the Landlord ("B.A.") and the Tenant participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] On March 20, 2023, the Landlord and the Tenant entered into a written fixed-term tenancy agreement for the Residential Property from March 20, 2023, to February 28, 2024. The Residential Property was a single unit of a multi-unit apartment building. Rent for the Residential Property was \$963.00 per month. A security deposit of \$481.50 was required and paid.

Landlord's Evidence and Submissions

- [5] The Landlord submitted 36 pages of documentary evidence, including photographs, a receipt, statements from representatives, and a signed copy of the tenancy agreement, among other documents.
- [6] The Landlord was permitted after the hearing to submit into evidence receipts for costs incurred for a cleaner to clean the rental unit. The Landlord submitted general payroll stubs that did not indicate hours worked specifically in the rental unit. The additional evidence was subsequently rejected.
- [7] The Landlord testified that the Tenant had been evicted due to smoking in the rental unit. The Landlord submitted into evidence an Eviction Notice (Form 4A) given to the Tenant on September 20, 2023, with an effective date of October 31, 2023. B.A. testified that the Tenant did not dispute the Eviction Notice and left well before the stated vacate date. B.A. testified that due to the Tenant vacating early, no exit inspection was performed in the rental unit with the Tenant.
- [8] The Landlord submitted that when possession was taken of the rental unit it was discovered that it had been left in a severely unclean condition. The Landlord submitted that there was an extremely strong odour of cigarettes which clung to the surfaces of the rental unit. The Landlord further submitted that garbage was left in the rental unit, and the floor and various appliances were dirty.
- [9] The Landlord submitted a cost breakdown of expenses that are claimed against the security deposit and accrued interest as follows:
- "Cost of paint and labour" - \$1,200.00
 - "Clean apartment" - \$240.00
 - "Loss of a month's rent" - \$963.00

- [10] The Landlord submitted a signed statement dated October 23, 2023, from a cleaner employed by the Landlord. In the statement, the cleaner stated that she had personally prepared the rental unit prior to the Tenant moving in and that there was no odour at that time. When the cleaner entered the rental unit after the Tenant had vacated, she described the smell of cigarettes as “overwhelming”. Further, the cleaner described the unit as having been left in an extremely unclean state with garbage left in it, the floors left dirty and sticky, and other surfaces left uncleaned. The cleaner stated that she had to dispose of garbage, clean appliances, and wash all surfaces. B.A. testified that the cleaner spent in total between six and eight hours cleaning the rental unit.
- [11] B.A. testified that the rental unit had to be given two new coats of paint to eliminate the smell of cigarettes. The Landlord submitted a copy of a receipt from a paint store which showed \$296.79 spent on paint supplies. B.A. further testified that a painter spent approximately two weeks painting within the rental unit. The Landlord did not submit receipts regarding the labour cost of the painter.
- [12] B.A. testified that the severity of the damage to the rental unit caused him to be unable to rent the rental unit for a month, for which he is claiming against the security deposit. B.A. testified that his claim against the security deposit and accrued interest will only cover a small portion of his expenses to repair the rental unit.

Tenant’s Evidence and Submissions

- [13] The Tenant did not submit any documentary evidence.
- [14] The Tenant testified that while she did smoke cigarettes outside, she never smoked cigarettes within the rental unit. The Tenant argued that other people smoke in the building and they could be responsible for the odours.
- [15] The Tenant further testified that the rental unit was not completely clean when she moved in. The Tenant testified that she found old food and a black mark in the stove the first time she went to use it.
- [16] The Tenant argued that the Landlord is being heavy-handed and unfair to her. The Tenant argued that she has been treated with a double standard at times. The Tenant testified that she was not allowed to keep a cat in the building, but there are nine cats kept in the building by various other tenants.

Analysis

- [17] The Officer begins by referencing the relevant law for the Application. Subsections 40.(1) and (3) 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.

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.*

[18] Further, the Officer references subsections 28.(3), (4) and (5), and 39.(2) of the Act.

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.*

39. Obligations on vacating

(2) *When a tenant vacates a rental unit, the tenant shall*

- (a) *leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear; and*
- (b) *give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

[19] The Officer notes that in this matter 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 in the amount of \$481.50, plus accrued interest in the amount of \$7.92 as of the date of this order, November 15, 2023.

[20] The Officer notes that the Landlord is claiming the entirety of the security deposit and accrued interest in the amount of \$489.42 to cover the alleged expenses.

[21] The Officer's findings for each claim are as follows.

Painting materials - \$296.79

[22] The Officer finds that the testimony of the parties disputed the state of cleanliness of the Residential Property. The documentary evidence, specifically, the photographs and the signed statement of the cleaner, establish that the rental unit was damaged by cigarette smoke beyond the standard of normal wear and tear. The Officer finds that it was reasonable for the Landlord to paint the interior of the rental unit to eliminate the odour of cigarettes.

- [23] The Landlord submitted into evidence a receipt from a paint store showing \$296.79 paid for painting materials. The Officer finds that this expense was incurred to restore the condition of the rental unit. Therefore, the Officer finds that the claim is allowed and the Landlord is entitled to **\$296.79** in painting materials expenses.

Painting labour - \$903.21

- [24] The Landlord is claiming \$903.21 in painting labour expenses, as calculated by taking the total of the Landlord's "cost of paint and labour" claim of \$1,200.00, and subtracting the aforementioned painting material costs of \$296.79.
- [25] The Officer notes B.A.'s testimony that a painter spent two weeks in the rental unit and needed to apply two coats of paint due to the severity of the odour. The Officer notes that the Landlord did not submit receipts which show a breakdown of the cost of labour for painting the rental unit.
- [26] As the Officer does not have an exact breakdown of the hours that the Landlord allocated to painting, the Officer adjusts the calculated hours to eight. The Officer finds that \$25.00/hour is an appropriate amount to expense in this case. Therefore, the Officer finds that the claim is allowed in part and the Landlord is entitled to **\$200.00** in painting labour expenses.

Cleaning labour - \$240.00

- [27] The Officer finds that the Landlord's evidence, specifically, the signed statement of the cleaner and the photographs of the floor, oven and fridge provide sufficient evidence that rental unit was left in a state of uncleanliness beyond that of normal wear and tear.
- [28] The Landlord claimed a cleaning expense of \$240.00 based upon six to eight hours of cleaning in the rental unit by a cleaner employed by the Landlord. The Officer notes that a \$240.00 cleaning fee for six hours of labour results in an hourly rate of \$40.00/hour. The Officer finds that this is an excessive claim. The Officer finds that \$25.00/hour is an appropriate amount to expense in this case. Therefore, the Officer finds that the claim is allowed in part and the Landlord is entitled to **\$150.00** in cleaning expenses.
- [29] The Officer finds that the Landlord has established that it has incurred expenses in excess of the amount of the security deposit and the accrued interest as a result of the Tenant contravening subsections 28.(3) and (4) of the *Act*. The Officer finds that the Landlord is entitled to retain the entirety of the security deposit and accrued interest. The Application is allowed and the Officer's calculations are as follows:

Item	Amount
Painting Materials	\$296.79
Painting Labour	\$200.00
Cleaning Labour	\$150.00
Total Expenses	\$646.79
Less Security Deposit	(\$481.50)
Less Interest (20/03/23 – 15/11/23)	(\$7.92)
Less Total	(\$489.42)
Award to Landlord (Limited to security deposit and accrued interest)	\$489.42

Conclusion

[30] The Landlord shall retain the security deposit and accrued interest in the amount of \$489.42.

[31] **Order LD23-527 was served to the parties by email on November 15, 2023.**

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain the security deposit and accrued interest in the amount of \$489.42.

DATED at Charlottetown, Prince Edward Island, this 15th 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.