

## Introduction

- [1] On September 14, 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 a claim against the security deposit.
- [2] The Landlord is making a claim to retain the security deposit in the amount of **\$1,275.00**. 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 14, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlord appeared, representing themselves. 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 November 1, 2022 the Landlord and the Tenants entered into a written month-to-month tenancy agreement for the Residential Property. Rent was \$1,700.00 due on the first day of the month. A security deposit of \$1,700.00 was required, and each tenant paid \$425.00. The Tenants vacated on or around August 31, 2023.

### Landlord’s Evidence and Submissions

- [5] The Landlord submitted 51-pages of documentary evidence, including invoices, receipts, inspection report, e-mail conversations, and photographs of the rental unit.
- [6] The Landlord testified that she is seeking to retain \$1,275.00 of the security deposit. This amount is for three tenants’ portion of the security deposit. The Landlord testified that the Tenants did not refill the Residential Property’s oil tank before vacating. The Landlord testified that it is the Tenants’ responsibility per the tenancy agreement. The Landlord submitted into evidence a copy of the invoice for the oil tank fill up, which cost \$1,326.97.

### Tenants’ Evidence and Submissions

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

## Analysis

- [8] 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.*

[9] 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.*

[10] 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. This means that the Officer must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim and the value of the alleged damages.

**Refill of the Residential Property's oil tank - \$1,326.97**

[11] The Officer finds that the Landlord's evidence, specifically, the tenancy agreement showing the provision regarding refilling the oil tank and the copy of the invoice dated September 14, 2023 and paid September 22, 2023 provides sufficient proof that the Landlord is entitled to claim the full amount of the security deposit in the amount of \$1,275.00 plus interest. The claim is allowed. And the Application is allowed. The Officer's calculations are as follows:

| Item                                | Amount       |
|-------------------------------------|--------------|
| Refill Oil Tank                     | \$1,326.97   |
| Less Security Deposit               | (\$1,275.00) |
| Less Interest (09/01/20 – 11/08/23) | (\$28.03)    |
| Less Total Amount                   | (\$1,303.03) |
| Less Amount Returned to Tenants     | \$0.00       |
| Total Award to Landlord             | \$1,303.03   |

**Conclusion**

[12] The Application is allowed.

[13] The Landlord shall retain the security deposit and interest in the amount of \$1,303.03.

[14] **Order LD23-533 is served to the parties by e-mail on November 17, 2023.**

**IT IS THEREFORE ORDERED THAT**

A. The Landlord shall retain the security deposit and interest in the amount of \$1,303.03.

**DATED** at Charlottetown, Prince Edward Island, this 17th 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.