

Introduction

- [1] On August 8, 2023, the Landlord 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 November 14, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and a Landlord witness participated. The Tenant did not participate.
- [3] 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. Is the Landlord entitled to retain all or part of the security deposit?

Summary of the Evidence

- [4] On June 5, 2022, the Tenant and the Landlord entered into a written month-to-month tenancy agreement for the Residential Property. The Residential Property consists of an apartment in a three-unit apartment building (the "Building"). Rent was \$1,200.00 due on the first day of the month. A security deposit of \$1,200.00 was paid. The Tenant vacated on July 26, 2023, as a result of an eviction notice.

Landlord's Evidence and Submissions

- [5] The Landlord submitted four pages of evidence, including a copy of the tenancy agreement, a copy of an eviction notice, and a break-down of the reasons and costs of why he is requesting to retain the security deposit.
- [6] The Landlord stated he is requesting to retain the security deposit for rent owing, repairs, and cleaning. He stated the Tenant did not pay rent for July 2023 in the amount of \$1,025.75. The Landlord is only seeking rent owing until July 26, 2023, when the Tenant vacated. A new tenant moved into the Residential Property on August 1, 2023.
- [7] The Landlord stated he had to replace two shower curtains which cost \$46.00 and he had to replace five curtain rods which cost \$70.00, as they were no longer in the Residential Property after the Tenant vacated. The Landlord stated the Residential Property was not clean and it required eight hours of cleaning at a cost of \$20.00 per hour. The Landlord stated his expenses exceed the amount of the security deposit.

Tenant's Evidence and Submissions

- [8] The Tenant submitted 16 pages of evidence including a written submission, text messages, photographs, and a water quality report. The Tenant did not participate in the hearing.
- [9] The Tenant submitted that she withheld rent because there were issues with the water at the Residential Property. She submitted the Residential Property was clean when she vacated. She submitted that she had to purchase her own shower curtains and curtain rods for the Residential Property.

Analysis

- [10] The Officer begins by referencing the relevant law for the Application. Sections 40, 19.(1), 28.(4) and (5) of the *Act* state:

Return of security deposit

40.(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.*

Tenant shall pay rent when due

19.(1) A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.

Tenant responsible for undue damage

28.(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

28.(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] 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.
- [12] The Officer finds that the Landlord has established a valid claim to retain the full amount of the security deposit in the amount of \$1,200.00 plus interest.
- [13] 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.

The Officer adjusts the interest accrued to the date this Order is issued.

Security Deposit	\$1,200.00
Interest (June 5/22 – Nov. 17/23)	\$26.38
Award to Landlord	\$1,226.38

[14] The Officer finds that the Landlord provided sufficient evidence, specifically the testimony of the Landlord, the breakdown of the Landlord's costs, and the submission provided by the Tenant, to establish that the Tenant owes outstanding rent (\$1,025.75), that there were items missing from the Residential Property (\$116.00), and cleaning of the Residential Property was required (\$160.00), totaling \$1,301.75, which exceeds the total amount of the security deposit.

[15] The rent owing from July 1 to July 26, 2023, is calculated as:

\$1,200.00 rent per month x 12 months	\$14,440.00 rent per year
\$14,440.00 / 365 days per year	\$39.45 rent per day
26 days of rent owing x \$39.45	\$1,025.75 rent owing

Conclusion

[16] The Application is allowed.

[17] The Landlord shall retain the security deposit plus interest in the amount of \$1,226.38

[18] Order LD23-534 was served on the parties by email on November 17, 2023.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain the security deposit plus interest in the amount of \$1,226.38.

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