

Introduction

- [1] On September 21, 2023, the Landlords filed a *Landlord Application to Determine Dispute* (Form 2B) dated September 20, 2023 (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking to make claim against the security deposit.
- [2] The Landlords are 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”). One of the Landlords (“B.C.”) participated in the hearing. The Tenant did not participate in the hearing. The Rental Office telephoned the Tenant, left a voicemail, sent an email, and waited ten minutes before proceeding with the hearing.

Issue to be Decided

- i. Are the Landlords entitled to retain the security deposit?

Summary of the Evidence

- [4] On December 17, 2021, the Landlords and the Tenant entered into a written one-year fixed-term tenancy agreement, after which it converted to a month-to-month agreement. The Residential Property was a single unit of a three-unit building. Rent for the Residential Property was \$1,200.00 per month, due on the first day of each month. A security deposit of \$1,200.00 was required and paid.

Landlords’ Evidence and Submissions

- [5] The Landlords submitted 38 pages of documentary evidence, including written arguments, copies of text message exchanges with the Tenant, photographs of the interior of the Residential Property, receipts, and bank records showing rent payments by the Tenant.
- [6] The Landlords submitted that they should be entitled to the entirety of the security deposit and accrued interest due to the Tenant not paying one month of rent, the Tenant not paying three electricity bills, and the Tenant having damaged the Residential Property which the Landlords incurred costs to repair.
- [7] B.C. testified that due to behavioural issues, the Tenant was given an eviction notice by the Landlords on July 31, 2023, effective August 31, 2023. The Tenant unsuccessfully contested the eviction notice and vacated the Residential Property on September 8, 2023, as directed by the Rental Office in Order LD23-408.
- [8] B.C. testified that the Tenant did not pay rent for July 2023. The Landlords submitted bank records showing receipt of monthly payments for the Residential Property. The records show regular payments up to May 31, 2023, then no payment in June, then a payment on July 31, 2023. The records do not disclose any payment after this date and the Landlords are not claiming rent owing after July 2023. While the records show payments as being submitted by another individual, B.C. testified that those payments were for the Tenant.
- [9] The Landlords submitted that the Tenant did not pay electricity bills for three months, which they claim against the security deposit. B.C. testified that electricity was the responsibility of the Tenant under the written tenancy agreement and that the Tenant had been paying the electricity bills prior to June 2023. The Landlords submitted copies of three energy bills, showing \$92.66 owing from May 5, 2023 to June 5, 2023, \$117.90 owing from June 5, 2023 to July 10, 2023, and \$118.24 owing from July 10, 2023 to August 7, 2023.

- [10] The Landlords further submitted that the Tenant caused extensive damage to the Residential Property for which they incurred substantial costs to repair. B.C. testified that numerous walls throughout the Residential Property were heavily damaged, doors were dented, and garbage was left in various rooms. The Landlords submitted a receipt from Home Depot for \$225.40 for a new door, a receipt for \$36.00 from Island Waste Management Corporation to dispose of garbage, and four receipts from Kent Building Supplies for numerous home repair items totaling \$1,549.99.
- [11] B.C. further testified that she spent 15 hours cleaning the interior of the Residential Property. B.C. testified that the other Landlord spent time repairing the unit but no time estimate was provided.

Tenant's Evidence and Submissions

- [12] The Tenant did not submit any documentary evidence and did not participate in the hearing.

Analysis

- [13] 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.*

- [14] Further, the Officer references subsections 19.(1), 28.(3), (4) and (5), and 39.(2) of the *Act*.

19. Tenant shall pay rent when due

- (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.*

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.*

- [15] The Officer notes that in this matter where there is a dispute over the security deposit, it is the Landlords' burden or onus to prove, on a balance of probabilities, any and all claims made against the security deposit in the amount of \$1,200.00, plus accrued interest in the amount of \$26.84 as of the date of this order, November 21, 2023.
- [16] The Officer notes that the Landlords are claiming the entirety of the security deposit and accrued interest in the amount of \$1,226.84 to cover rent owing and alleged expenses.
- [17] The Officer's findings for each claim are as follows.

Rent owing - \$1,200.00

- [18] The Officer finds that based on the bank records submitted into evidence and the testimony of B.C., the Tenant did not pay one month of rent. The Officer notes that rent was shown to have been paid on May 31, 2023, and then not again until July 31, 2023, leaving one month of rent unpaid.
- [19] The Officer finds that the claim is allowed and the Landlords are entitled to **\$1,200.00** in rent owing.

Electricity bills - \$328.80

- [20] The Officer finds that based on the three electricity bills submitted into evidence and the testimony of B.C., the Tenant did not pay \$328.80 in electricity bills. The Officer finds that electricity was the responsibility of the Tenant under the tenancy agreement.
- [21] The Officer finds that the claim is allowed and the Landlords are entitled to **\$200.00** in outstanding electricity bills.

Repair material costs - \$1,811.39

- [22] The Officer finds that the Landlords' evidence, specifically, the photographs of heavily damaged walls, doors, and fridge, provide sufficient evidence that the Residential Property was left in a damaged state beyond that of normal wear and tear.

- [23] The Officer finds that the Landlords reasonably incurred the expenses shown on the receipts due to the damage caused by the Tenant to the Residential Property. The Officer finds that the claim is allowed and the Landlords are entitled to **\$1,811.39** in repair material costs.

Repair and cleaning labour costs - \$375.00

- [24] The Officer finds that based on B.C.'s testimony, B.C. spent 15 hours cleaning and repairing the Residential Property. The Officer finds that this was reasonable based on the photographs of the damaged and unclean condition of the Residential Property. The Officer finds that \$25.00/hour is an appropriate amount to expense in this case, resulting in a total expense of \$375.00 for 15 hours.
- [25] The Officer finds that the claim is allowed and the Landlords are entitled to **\$375.00** in repair and cleaning labour costs.
- [26] The Officer finds that the Landlords are 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
Rent Owning	\$1,200.00
Unpaid Electricity Bills	\$328.80
Repair Material Costs	\$1,811.39
Repair and Cleaning Labour Costs	\$375.00
Total Expenses	\$3,715.19
Less Security Deposit	(\$1,200.00)
Less Interest (17/12/21 – 21/11/23)	(\$26.84)
Less Total	(\$1,226.84)
Award to Landlords (Limited to security deposit and accrued interest)	\$1,226.84

Conclusion

- [27] 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.

- [28] The Officer adjusts the interest accrued to the date this Order is issued.
- [29] The Landlords shall retain the security deposit and accrued interest in the amount of \$1,226.84
- [30] **Order LD23-542 was served to the parties by email on November 21, 2023.**

IT IS THEREFORE ORDERED THAT

A. The Landlords shall retain the security deposit and accrued interest in the amount of \$1,226.84.

DATED at Charlottetown, Prince Edward Island, this 21st 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.