

Introduction

- [1] On September 12, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed to make a claim against the security deposit.
- [2] On November 21, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord, a Landlord witness, and the Tenant participated.

Issue to be Decided

- i. Is the Landlord entitled to retain all or part of the security deposit?

Summary of the Evidence

- [3] On February 13, 2022, the Tenant and the Landlord entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property consists of an apartment in a multi-unit apartment building. Rent was \$1,250.00 due on the first day of the month. A security deposit of \$1,250.00 was paid. The Tenant vacated on August 30, 2023.

Landlord's Evidence and Submissions

- [4] The Landlord submitted several pages of documentary evidence including a written submission, photographs of the bathroom of the Residential Property, a copy of Order LD23-311, and invoices for the bathroom repair and the purchase of a fridge.
- [5] The Landlord stated he is requesting to retain the entire security deposit for repairs to the bathroom and for having to purchase a new fridge for the Residential Property. The Landlord stated the Tenant was recently ordered to be evicted because he had caused water damage to the bathroom in the Residential Property. The Landlord stated the photos submitted show the damage to the bathroom as well as the bathroom after it had been repaired. He stated the cost to repair the bathroom was \$4,904.30, and this is indicated on the invoice submitted into evidence.
- [6] The Landlord stated he was required to purchase a new fridge for the Residential Property. He stated because the Tenant had the old fridge pushed against the wall, there was no air circulation and the fridge stopped working. He stated the cost of the new fridge was \$750.95, and this is indicated on the invoice submitted into evidence.

Tenant's Evidence and Submissions

- [7] The Tenant did not submit any documentary evidence. The Tenant stated the Residential Property is old and not in good condition. He stated the damage to the bathroom was not his fault. The Tenant stated he requires a return of the security deposit because of financial hardship.

Analysis

Issue i: Is the Landlord entitled to retain all or part of the security deposit?

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

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.*

28. 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.

28. 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.

- [9] The Officer makes comment that in such matters 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.
- [10] The Officer finds that the Landlord has established a valid claim to retain the full amount of the security deposit in the amount of \$1,250.00 plus interest, totaling \$1,278.51. The Officer finds that the Landlord has provided sufficient evidence, specifically the Landlord’s testimony and the submitted photographs and invoice, to establish that the damage to the bathroom was beyond normal wear and tear.
- [11] The Officer does not find that the Landlord has provided sufficient evidence to establish that the damage to the fridge was due to an action or neglect of the Tenant. No photographs or inspection reports were submitted to attest to the condition of the fridge when the Tenant moved in or out. No report was submitted from the appliance repair person as to the condition of the fridge when it was attempted to be repaired. The Officer notes that such evidence would have been of assistance for the determination of this matter.
- [12] 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	\$1,250.00
Interest (Feb. 13/22 – Nov. 29/23)	\$28.51
Award to Landlord	\$1,278.51

Conclusion

[13] Application is allowed.

[14] The Landlord shall retain the security deposit and interest in the amount of \$1,278.51.

[15] Order LD23-558 was served on the parties by email on November 29, 2023.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain the security deposit and interest in the amount of \$1,278.51.

DATED at Charlottetown, Prince Edward Island, this 29th 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.