

Introduction

- [1] On September 7, 2023 the Representative filed a *Landlord Application to Determine Dispute* (Form 2(B)) on behalf of the Landlord (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is requesting the Tenant pay outstanding rent, and make a claim against the security deposit and interest.
- [2] The Landlord is seeking an award of **\$1,614.80** for outstanding rent, and to keep the security deposit in the amount of **\$1,375.00** plus interest. 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 21, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Representative appeared, representing the Landlord. The Tenant did not appear and did not have a representative at the hearing.

Issues to be Decided

- i. Is the Landlord entitled to payment for outstanding rent?
- ii. Is the Landlord entitled to retain the security deposit and interest?

Summary of the Evidence

- [4] On January 25, 2023 the parties entered into a written fixed term tenancy agreement. Rent was \$1,375.00 due on the first day of the month. A security deposit of \$1,375.00 was required and paid on January 25, 2023.

Landlord's Evidence and Submissions

- [5] The Landlord submitted 23-pages of documents into evidence including photographs, screenshots of e-mail service of documents, the tenancy agreement, and invoices.
- [6] The Tenant did not pay rent for August 2023 and owes rent for five days in September 2023. The Tenant contacted the Representative on August 1, 2023 about being late with rent for August 2023. The Representative is seeking payment of the outstanding rent for August 2023, plus the 1% interest charge, and five days of rent for September 2023.
- [7] On August 17, 2023 the Representative served an *Eviction Notice* to the Tenant for non-payment of rent. The Tenant vacated the Residential Property on September 6, 2023.
- [8] On September 6, 2023 the Representative inspected the Residential Property. The Representative took the photographs submitted into evidence. The Representative testified to seeing significant damage to the interior door, having to change the dead bolt, smoke damage and smell on the walls and overall the Residential Property was left in an unclean state.
- [9] The cost to replace the interior door and entry dead bolt cost \$729.88. The cost to clean and paint the Residential Property was \$700.00. The Landlord seeks to keep the security deposit to cover these expenses.

Tenant's Evidence and Submissions

- [10] The Tenant did not submit any evidence and did not participate at the hearing to provide testimony.

Analysis

- [11] The Application is made in accordance to section 75 of the *Act* and is seeking payment of outstanding rent and to retain the security deposit and interest. In such applications it is the landlord's burden or onus to prove, on a balance of probabilities, any and all claims made in the Application. This means that the decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim(s).

The Outstanding Rent - \$1,614.80

- [12] A tenant is required to pay rent when it is due pursuant to subsection 19.(1) of the *Act*, it states:

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.*

- [13] The Landlord is seeking payment of outstanding rent for August 2023 in the amount of \$1,375.00, along with a 1.0% late fee as required under the tenancy agreement (\$13.75), and five days of rent owed between September 1 – 5, 2023 in the amount of \$226.05 (\$45.21 charged daily).

- [14] The evidence establishes that the Tenant did not pay rent for August 2023 and was given an *Eviction Notice* by e-mail on August 17, 2023. The Tenant then vacated the Residential Property on September 6, 2023. The Tenant was required to pay rent for August 2023 and rent for the five days for September 2023. Further, the 1.0% late fee is not a prohibited fee under section 20.(1) of the *Act*. Therefore, the Officer concludes that the Landlord is entitled to payment for outstanding rent in the amount of **\$1,614.80**.

The Security Deposit - \$1,375.00 plus interest

- [15] The Landlord is making a claim against the security deposit pursuant to subsection 40.(1) of the *Act*, it 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.

- [16] A tenant's responsibilities are pursuant to subsections 28.(3), (4) and (5) of the *Act*, it states:

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.*

[17] The Officer concludes that the Landlord is entitled to retain the security deposit and interest for damage to the Residential Property’s interior door, replacement of the dead bolt, and cleaning the Residential Property. The Landlord’s evidence, specifically, the direct testimony of the Representative and photographs of the Residential Property on September 6, 2023 establish that the Tenant failed to meet their responsibility under clauses 28.(3) and (4) of the *Act*.

[18] Further, the Officer is satisfied that the Landlord has provided sufficient evidence to establish their expenses as it relates to the Tenant’s breach of clauses 28.(3) and (4) of the *Act*. Specifically, the Officer relies on the two invoices provided into evidence dated September 12, 2023 for cleaning and painting and October 1, 2023 for replacing the interior door and dead bolt. The Application is allowed.

Item	Amount
Outstanding rent owed	\$1,614.80
Damage to door and dead bolt	\$729.88
Cleaning and painting	\$700.00
Less Security Deposit	(\$1,375.00)
Less Interest (01/25/23 – 11/29/23)	(\$29.01)
Less Total amount	(\$1,404.01)
Total amount awarded to Landlord	\$1,614.80

[19] Pursuant to subsection 14.(9) of the *Act*:

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.

[20] The interest accrued is adjusted to the date this Order is issued.

[21] The Officer notes that there is an additional \$25.87 in total expenses to the Landlord after deducting the security deposit and interest. However, the Landlord did not request additional expenses above the security deposit and interest other than the outstanding rent in the Application.

Conclusion

[22] The Application is allowed.

[23] The Tenant shall pay the Landlord \$1,614.80 on or before December 31, 2023.

[24] The Landlord shall retain the security deposit and interest in the amount of \$1,404.01.

[25] **Order LD23-559 will be served to the parties by e-mail on November 29, 2023.**

IT IS THEREFORE ORDERED THAT

A. The Tenant shall pay the Landlord \$1,614.80 on or before December 31, 2023.

B. The Landlord shall retain the security deposit and interest in the amount of \$1,404.01.

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