

Introduction

- [1] On November 2, 2023, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) dated November 1, 2023 (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking to make a claim against the security deposit and accrued interest.
- [2] The Landlord is 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 23, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A representative of the Landlord ("K.W.") and two witnesses for the Landlord ("J.B." and "R.M.") participated in the hearing. The Tenants advised the Rental Office in advance that they did not wish to participate in the hearing.

Issue to be Decided

- i. Is the Landlord entitled to retain the security deposit?

Summary of the Evidence

- [4] On August 31, 2020, the Tenants and the Landlord entered into a written one-year fixed-term tenancy agreement from September 1, 2020 to August 31, 2021, after which it converted to a month-to-month agreement. The Residential Property was a single unit of a multi-unit apartment building. Rent for the Residential Property was \$1,275.00 per month, due on the first day of each month. A security deposit of \$1,275.00 was required and paid.

Landlord's Evidence and Submissions

- [5] The Landlord submitted 35 pages of documentary evidence including a copy of the tenancy agreement, condition inspection reports from the beginning and the end of the tenancy, photographs of the Residential Property, invoices, and an email exchange with the Tenants.
- [6] The Landlord is claiming against the entirety of the security deposit for costs incurred to paint two coats on the Residential Property walls and repair 50 square feet of walls.
- [7] The Landlord submitted that when the Tenants vacated the Residential Property on October 31, 2023, it was discovered that the Tenants had painted the interior of the Residential Property without receiving prior approval on the colours, as required under the tenancy agreement. K.W. testified the Landlord had to pay for the interior of the Residential Property to be repainted in a tone that was sufficiently similar to other rental units in the building.
- [8] J.B. and R.M. testified that the colours were substantially different from other rental units and three coats of paint were required to adequately cover up the Tenants' paint. The Landlord submitted an invoice which showed a cost of \$1,035.00 to paint two coats within the Residential Property. K.W. testified that the Landlord is only claiming the costs for two coats of paint, despite further costs having been incurred.
- [9] The Landlord submitted a copy of the tenancy agreement. Schedule D, section 3 states the following in part: "Painting, papering, or decorating of the rental unit or Residential Property may be done only with the Lessor's prior written consent and with Lessor approved colours."

- [10] Schedule D, section 10 of the tenancy agreement states the following in part: "Further to section 3 of the rules and regulations when the vacates the unit they will be responsible for returning the unit back to the same condition, reasonable wear and tear excepted, as it was given to them. This includes, but is not limited to, cleaning of the unit. Failure to comply will necessitate our carrying the necessary repairs and/or cleaning (where applicable) of your unit at your expense."
- [11] K.W. testified that prior to the formation of the tenancy agreement, the Tenants had inquired via email with the prior building manager about painting the interior of the Residential Property. K.W. noted that in the email, the Tenants asked whether it was possible to paint within the Residential Property, but on the condition that the colour is approved. The previous building manager said that yes, the Tenants could paint any room. K.W. argued that the previous building manager gave permission to paint the interior of the Residential Property, but only if the colour was approved. K.W. testified that the Tenants never asked the Landlord whether they could paint the interior of the Residential Property in the colours that they used.
- [12] K.W. submitted that the Tenants failed to follow Schedule D, sections 3 and 10 by failing to obtain permission to paint the Residential Property in an approved colour, and failing to return the Residential Property to its original colour upon vacating.
- [13] The Landlord also submitted that the Tenants had installed a "backsplash" above the sinks in the bathroom and kitchen, which caused damage to the walls when it was removed. The Landlord submitted photographs of the walls above the bathroom and kitchen sinks, which showed damage and discolouration. The Landlord submitted an invoice showing a total cost of \$287.50 to repair and paint the 50 square feet of damaged walls above the bathroom and kitchen sinks.

Tenants' Evidence and Submissions

- [14] The Officer notes that the Tenants did not attend the hearing, however, they submitted three pages of documentary evidence, consisting of one photograph and copies of an email exchange between the Tenants and the former building manager for the Residential Property.
- [15] The Tenants submitted that they were given written permission from a representative of the Landlord to paint the interior of the Residential Property. In an email dated July 9, 2020, one of the Tenants stated they were considering entering a tenancy agreement for the Residential Property and asked: "Would it be possible for me to paint some of the interior later on, if the colour is approved?"
- [16] Later that day, the building manager responded in an email, stating "Yes you can paint any room you want."
- [17] The Tenants submitted one photograph of the interior of the Residential Property showing a room within the Residential Property in a light-yellow paint tone.

Analysis

- [18] Subsections 28.(3), (4), (5), 39.(2), and 40.(1) and (3) of the *Act* state:

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.*

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.*

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.*

[19] The Officer notes that in this matter 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 in the amount of \$1,275.00, plus accrued interest in the amount of \$36.52 as of the date of this order, November 29, 2023.

[20] The Officer notes that the Landlord is claiming the entirety of the security deposit and accrued interest in the amount of \$1,311.52 to cover alleged expenses.

[21] The Officer's findings for each claim are as follows:

Repainting Costs

- [22] The Officer notes Schedule D, section 3 of the tenancy agreement states that the Tenants may paint the interior of Residential Property only with prior written permission from the Landlord, and with Landlord-approved colours. The Officer notes that the email sent by the Tenants to the building manager stated “Would it be possible for me to paint some of the interior later on, **if the colour is approved?**” *[emphasis added]*. The Officer finds that the building manager stated that permission would be granted to paint any room on the condition that the colours were approved, as indicated in the Tenants’ email.
- [23] Further, the Officer finds that the building manager’s comment “Yes, **you can paint any room**” was a clarification of which rooms could be painted, in response to the Tenants’ question “Would it be possible for me to paint **some of the interior** later on, if the colour is approved?” *[emphasis added]*. The Officer finds that this response did not invalidate the precondition listed in the Tenants’ email, that the paint colours had to be approved.
- [24] The Officer further notes that the email exchange between the Tenants and the former building manager occurred on July 9, 2020, prior to the signing of the tenancy agreement on August 31, 2020. The Tenants signed the tenancy agreement, including sections 3 and 10 of Schedule D, prior to taking possession of the Residential Property.
- [25] The Officer finds that the Tenants did not submit any paint colour to the Landlord for approval and the Tenants painted the interior of the Residential Property without the Landlord’s permission. The Officer finds that it was reasonable for the Landlord to repaint the Residential Property to restore it to a colour comparable to other rental units and to claim those expenses against the security deposit.
- [26] The Officer notes the invoice submitted by the Landlord showing a cost of \$1,035.00, to paint two coats on the walls of the Residential Property. The Officer finds that the claim is allowed and the Landlord is entitled to **\$1,035.00** in repainting costs.

Wall Damage Repairs Costs

- [27] The Officer finds that the Landlord’s evidence, specifically K.W.’s testimony and photographs of damaged walls by the bathroom and kitchen sinks, provide sufficient evidence that the portions of walls above the bathroom and kitchen sinks were left in a damaged state beyond that of normal wear and tear.
- [28] The Officer notes that the photographs show significant portions of damage and discolouration above the bathroom and kitchen sinks. The Officer notes the invoice submitted by the Landlord showing a cost of \$287.50, for additional repair and painting of 50 square feet of walls within the Residential Property. The Officer finds that the claim is allowed and the Landlord is entitled to **\$287.50** in painting costs.
- [29] The Officer finds that the Landlord is 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
Repainting Costs	\$1,035.00
Wall Damage Repair Costs	\$287.50
Total Expenses	\$1,322.50
Less Security Deposit	(\$1,275.00)
Less Interest (09/01/20 – 11/29/23)	(\$36.52)
Less Total	(\$1,311.52)
Award to Landlord (Full amount of security deposit and accrued interest, as sought)	\$1,311.52

Conclusion

[30] 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.

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

[32] The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$1,311.52.

[33] **Order LD23-560 was served to the parties by email on November 29, 2023.**

IT IS THEREFORE ORDERED THAT

[34] The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$1,311.52.

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