

Introduction

- [1] On October 10, 2023 the Landlord's Representative filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking to make a claim against the security deposit.
- [2] The Landlord is making a claim to retain the security deposit in the amount of **\$1,438.92**. All relevant documents (including the Notice of Hearing and Combined Evidence Package) 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"). The Landlord's Representative appeared, representing the Landlord. The Tenants Representative appeared, representing the Tenants.

Issue to be Decided

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

Summary of the Evidence

- [4] On November 1, 2017 the parties entered into a written fixed term tenancy agreement which converted to a month-to-month agreement. Rent was \$1,679.00 due on the first day of the month. A security deposit of \$1,570.00 was required and paid.

Landlord's Evidence and Submissions

- [5] The Landlord submitted 21-pages of documents into evidence including a Notice of Intention to Retain Security Deposit (FORM 8), photographs, a brief submission, invoices, a notice to vacate, an inspection report dated September 13, 2023, and an internal e-mail between the Representative and another employee of the Landlord.
- [6] The Representative testified that the Landlord retained \$1,438.92 from the security deposit to cover the costs associated to bringing the Residential Property back from disrepair. The Representative testified that the remaining balance (\$218.01 includes interest) was returned to the Tenants.
- [7] The breakdown of expenses are as follows:

Item	Expense
Repair to trim and baseboards	\$380.36
Materials for trim	\$86.12
Canned paint for trim	\$86.24
Molding	\$34.21
Replacement for magnet	\$45.99
Labour for painting trim	\$805.00
Total Expense	\$1,438.92

- [8] The Representative testified that the tenancy ended September 30, 2023, however, the Tenants vacated on September 13, 2023. During the exit inspection, the damage observed was beyond what the Representative would consider wear and tear. The Representative testified that it took approximately 15.5 hours to repair the Residential Property and 12 hours to clean. The Representative testified that additional costs were incurred but were not taken from the security deposit.
- [9] The Representative testified that he took the photographs submitted into evidence.

Tenants' Evidence and Submissions

- [10] The Tenants submitted 24-pages of documents into evidence including a written submission, e-mails between the parties, the inspection report dated September 13, 2023, and photographs.
- [11] The Tenants' Representative argued that the Tenants are not disputing a portion of the costs associated with the Landlord's claim. The Tenants Representative is disputing the Landlord's claim for the amount of \$805.00 associated with painting the trim.
- [12] The Tenants' Representative argued that the Landlord's evidence does not justify the expense. The invoice provided into evidence by the Landlord (Page 14 of the Evidence Package) does not provide sufficient information to establish the legitimacy of the expense.

Analysis

- [13] The Application is made in accordance to section 75 of the *Act* and is seeking to make a claim against the security deposit pursuant to subsection 40.(1) of the *Act*. The relevant law is as follows:

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.*

- [14] Further, subsections 28.(3), (4) and (5) of the *Act* 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.*

- [15] The Officer comments that in such matters where there is a claim made 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. This means that the decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim(s) made against the security deposit.

Claim: Materials and repair to the trim, baseboards, mold and magnet - \$633.92

- [16] The testimony of the parties was undisputed regarding the damage to the Residential Property's trim and baseboards. The Representative provided photographs, invoices and receipts in evidence demonstrating the damage and the cost associated with the repair. The Officer concludes that the Landlord provided sufficient evidence to establish its claim that the damage to the trim, baseboards and repair to the mold and magnet are beyond normal wear and tear. The claim in the amount of \$633.92 is allowed.

Claim: Painting the trim - \$805.00

- [17] The Landlord provided an invoice for \$700.00 plus HST for the cost associated with painting the trim. The Tenants' Representative disputed this expense as being *drastically overcharged* and questioned the totality of the evidence substantiating this expense. The Officer agrees with the Tenants Representative's argument. After reviewing the documentary evidence presented by the Landlord, specifically, the Invoice #0048, the Officer concludes that the Landlord has not provided sufficient evidence to assist in breaking down the expenses related to painting the trim. The invoice submitted into evidence lacks the necessary details required in assisting the Officer with determining the reasonableness of this expense.
- [18] The Officer concludes that a portion of the painting should be attributed to the Landlord's claim against the security deposit based on the finding of damage to the trim beyond normal wear and tear. As the Officer is unable to determine the actual expense due to insufficient evidence, the Officer allows eight hours of painting the trim at \$30.00 an hour for a total amount of \$240.00. The claim is allowed in part. The Officer's calculations are as follows:

Item	Amount
Claims allowed	\$873.92
Less Security Deposit	(\$1,570.00)
Less Interest (11/01/17 – 12/06/23)	(\$94.14)
Less Total Amount	(\$1,664.14)
Less Amount Returned to Tenants	(\$218.01)
Total Award to Landlord	\$873.92
Total Amount to be Returned to Tenants	\$572.21

- [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.

Conclusion

- [21] The Application is allowed, in part.
- [22] The Landlord shall retain \$873.92 from the security deposit and interest.
- [23] The Landlord shall return \$572.21 from the security deposit and interest forthwith.
- [24] **Order LD23-572 will be served to the parties by e-mail on December 6, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$873.92 from the security deposit and interest.
- B. The Landlord shall return \$572.21 from the security deposit and interest forthwith.

DATED at Charlottetown, Prince Edward Island, this 6th day of December, 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.