

Introduction

- [1] On November 2, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Tenant Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed to request compensation as a result of an eviction.
- [2] On November 10, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Landlord Application") with Rental Office. The Application was filed to request to retain the security deposit as well as for additional expenses not covered by the security deposit.
- [3] On December 5, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and Tenant participated.

Issues to be Decided

- i. Is the Tenant entitled to compensation?
- ii. Is the Landlord entitled to retain the security deposit and to compensation for damages?

Summary of the Evidence

- [4] On May 1, 2021, the Tenant and the Landlord entered into a written month-to-month tenancy agreement for the Residential Property. Rent was \$1,975.00 due on the first day of the month. A security deposit of \$1,850.00 was paid. The Tenant vacated on October 28, 2023, as a result of an eviction notice for occupation by the Landlord's son.

Tenant's Evidence and Submissions

- [5] The Tenant submitted several pages of documentary evidence including text messages and photographs of the Residential Property.
- [6] The Tenant was evicted by the Landlord to allow the Landlord's son to move into the Residential Property. He is requesting compensation for being evicted in the amount of one month's rent and moving expenses. The Tenant submitted an invoice for moving expenses in the amount of \$96.74.
- [7] The Tenant stated all of the items the Landlord is claiming as damages should be considered reasonable wear and tear. The photographs and text messages submitted by the Tenant show the Tenant had asked the Landlord to fix various things at the property and those things were not fixed. The Tenant had to put plastic over some of the windows during Hurricane Fiona because the windows were drafty.

Landlord's Evidence and Submissions

- [8] The Landlord submitted several pages of documentary evidence including photographs of the Residential Property and an estimate to complete repairs to the property. He agreed to compensate the Tenant one month's rent and reasonable moving expenses. His son will be moving into the property after the repairs to the property have been completed.
- [9] The Landlord stated it will cost \$6,974.75 to repair the property due to damages caused by the Tenant. There are damaged doors, damaged window frames where the Tenant covered the windows with plastic, damaged screens, and other damages. He stated his photographs and estimate shows what needs to be repaired.

[10] He is seeking to retain the security deposit and for the Tenant to pay for the extra costs above the security deposit. He agreed some of the items noted by the Tenant considered reasonable wear and tear and he is not seeking compensation for those items, such as the microwave door handle, deck roof, and shower head.

[11] The Landlord is claiming:

Damage to three doors and labour	\$690.00
Wall damage repair and painting	\$230.00
Kitchen cabinet door replacement	\$120.00
Bathroom door repair under sink	\$80.00
Repairing two plugs	\$75.00
Repairing 6 window screens and door screen	\$920.00
Front window 8 by 6 replacement and labour	\$3,950.00
HST	\$909.75
TOTAL	\$6,974.75

Analysis

Issue i: Is the Tenant entitled to compensation?

[12] The *Act* states:

Landlord's notice for landlord's use of property

62. A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by

(c) a child, parent or a dependent of the landlord or the landlord's spouse.

Compensation for personal use

72. A landlord shall compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to one month's rent plus reasonable moving expenses in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant.

Subsection 6.(1) of the *Residential Tenancy Regulations* (the "*Regulations*") state:

For the purposes of subsections 70(1) and (2) and sections 71 and 72 of the Act, reasonable moving expenses are the lesser of the actual expenses of the move or one month's rent.

[13] The Officer finds the Tenant has established he is entitled to compensation in the amount of one month's rent equaling \$1,975.00. The Officer also finds the Tenant has established he is entitled to moving expenses in the amount of \$96.74 and that the moving expenses are in accordance with the *Regulations*. The Officer finds the Tenant is entitled to total compensation in the amount of \$2,071.74 and the Tenant Application is allowed.

Issue ii: Is the Landlord entitled to retain the security deposit and to compensation for damages?

[14] The Act 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.*

14. Interest rate

(9) *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. 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.*

[15] The Landlord is seeking to retain the security deposit and for compensation to cover expenses for alleged damages caused by the Tenant. In such matters where there is a dispute over the security deposit or compensation for damages, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all claims.

[16] The Officer does not find that the Landlord has established his claim for the replacement of the 8 by 6 front window (\$3,950.00). The Officer notes the photographs show there is some trim damage around the lower part of the window but no evidence was presented showing the entire window needs to be replaced. This part of the Landlord Application is denied.

[17] The Officer finds the Landlord has established his remaining claims that the Tenant has contravened subsection 28.(4) of the Act, and that the remaining damages claimed are beyond normal wear and tear. The Officer notes the Landlord's testimony, photographs, and estimate, assisted in establishing the Landlord's remaining claims. The Officer finds the Landlord is entitled to compensation for damages in the amount of \$2,432.25 and this part the Landlord Application is allowed. The calculations are as follows:

Damage to three doors and labour	\$690.00
Wall damage repair and painting	\$230.00
Kitchen cabinet door replacement	\$120.00
Bathroom door repair under sink	\$80.00
Repairing two plugs	\$75.00
Repairing 6 window screens and door screen	\$920.00
Subtotal	\$2,115.00
HST	\$317.25
TOTAL	\$2,432.25

- [18] The Officer therefore finds that the Landlord has established a valid claim to retain the security deposit (\$1,850.00) plus accrued interest (\$47.07). The Officer adjusts the interest accrued to the date this Order is issued. The security deposit, accrued interest, and Tenant's compensation is offset from the Landlord's expenses, leaving \$1,536.56 in compensation owed to the Tenant. The calculations are as follows:

Landlord's Expenses	\$2,432.25
Less Security Deposit	(\$1,850.00)
Less Interest (May. 1/21 – Dec. 13/23)	(\$47.07)
Subtotal	\$535.18
Less Compensation to Tenant	(\$2,071.74)
Total Owing to the Tenant	\$1,536.56

Conclusion

- [19] The Tenant Application is allowed. The Tenant is entitled to the equivalent of one month's rent (\$1,975.00) plus reasonable moving expenses (\$96.74) totaling **\$2,071.74**.
- [20] The Landlord Application is allowed in part. The Landlord is entitled to retain the security deposit (\$1,850.00) plus accrued interest (\$47.07), and partial compensation for damages (\$2,432.45), leaving \$535.18 in expenses owed to the Landlord.
- [21] The Landlord's remaining expenses are offset from the Tenant's compensation, calculated as (\$2,071.74 - \$535.18), leaving **\$1,536.56** in compensation owed to the Tenant.
- [22] Sub-subsection 85.(1)(d) of the Act states:

85. Power of the Director

(1). After hearing an application, the Director may make an order

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement

(j) determining the disposition of a security deposit, including

- (i) authorizing a tenant to offset, in the manner specified in the order, money a landlord owes to the tenant against money the tenant owes to the landlord, and
- (ii) authorizing a landlord to offset, in the manner specified in the order, money a tenant owes to the landlord against money the landlord owes to the tenant, other than a security deposit where the landlord has not made an application under clause 40(1)(b);

- [23] The Landlord shall pay the Tenant **\$1,536.56** on or before January 31, 2024.
- [24] Order LD23-587 was served on the parties by email on December 13, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the security deposit and accrued interest in the amount of \$1,897.07.
- B. The Landlord shall pay the Tenant **\$1,536.56** on or before January 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 13th day of December, 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.