

## Introduction

- [1] On October 24, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is requesting the Tenant pay outstanding rent, and making a claim against the security deposit and accrued interest.
- [2] The Landlord is seeking rent owing from the Tenant for one month of unpaid rent in the amount of **\$2,650.00**, and the Landlord is claiming against the security deposit and accrued interest. The Landlord continues to possess the entirety of the security deposit and accrued interest at present. 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 28, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A representative for the Landlord (the "Representative"), a witness for the Landlord ("J.L."), and the Tenant participated in the hearing.

## Issues to be Decided

- i. Does the Tenant owe rent to the Landlord?
- ii. Is the Landlord entitled to retain the security deposit?

## Summary of the Evidence

- [4] On May 16, 2023, the Landlord and the Tenant entered into a written one-year fixed-term tenancy agreement from June 1, 2023 to May 31, 2024 for the Residential Property. The Residential Property is one half of a duplex. Rent was \$2,650.00 due on the first day of the month. A security deposit was required and paid in the amount of \$2,650.00.

### Landlord's Evidence and Submissions

- [5] The Landlord submitted 21 pages of documentary evidence, including a copy of the tenancy agreement, photographs of the interior of the Residential Property, an invoice for costs incurred to repair the Residential Property, and copies of text message exchanges between the Representative and the Tenant.
- [6] The Landlord is claiming one month of rent owing for October 2023. The Landlord testified that on September 29, 2023, the Tenant advised her that she would be vacating the Residential Property, despite the parties having entered a fixed-term lease until May 31, 2024. The Landlord testified that the Tenant vacated on October 4, 2023, and that the Tenant did not pay rent for October 2023. The Representative testified that she had new tenants move into the Residential Property on November 1, 2023. The Representative testified that she never made any agreement with the Tenant to end the tenancy agreement on a specific date.
- [7] The Landlord is further claiming a total of \$1,397.45 against the security deposit, consisting of \$334.95 in water bill expenses unpaid by the Tenant, and \$977.50 as a "maintenance fee". The Landlord provided a breakdown of the maintenance fee, consisting of \$575.00 for repainting and trim work and a shower door repair, \$57.50 for repairing a toilet, \$172.50 for maintenance on the leaking washing machine, and \$172.50 for "materials".

- [8] The Representative testified that paying the water bill was the responsibility of the Tenant under the tenancy agreement. The Landlord submitted a copy of the tenancy agreement which showed the water utility as a responsibility of the Tenant. The Landlord submitted a copy of a water bill dated September 12, 2023, showing an amount owing of \$251.95, including a portion owing from the previous bill. The Representative estimated that a further amount of approximately \$83.00 was incurred by October 4, 2023.
- [9] The Landlord submitted that they had to replace a shower door that was broken by the Tenant. The Landlord did not submit individualized receipts for the replacement shower door or provide an estimate for labour hours or expenses.
- [10] The Landlord argued that the Tenant damaged several areas of wall and trim within the Residential Property. The Landlord submitted photographs showing damage to two walls within the Residential Property. The Landlord did not provide receipts for painting materials or an estimate for labour hours or expenses.
- [11] The Landlord submitted that J.L. attended the Residential Property to repair a toilet based on a request from the Tenant, incurring an expense of \$57.50. No breakdown of this cost was submitted.

#### **Tenant's Evidence and Submissions**

- [12] The Tenant submitted one video and 16 pages of documentary evidence, including written arguments, photographs of the interior of the Residential Property, and copies of email exchanges between the Tenant and the Representative.
- [13] The Tenant submitted that there were severe issues with the Residential Property from the time she and her family occupied it. The Tenant testified that nearly all the claims made against the security deposit by the Landlord were based upon damage not caused by the Tenant and her family.
- [14] The Tenant submitted that there were severe mould issues within the rental unit. The Tenant submitted copies of email exchanges in which she advised the Landlord of this issue. The Tenant additionally submitted photographs depicting significant amounts of mould. The Tenant further testified that one of her family members has a sensitivity that was greatly impacted by the presence of the mould.
- [15] The Tenant submitted that there were leaks within the Residential Property that were likely responsible for the presence of mould. The Tenant submitted an undated video from the basement of the Residential Property showing water pouring out of a ceiling light fixture.
- [16] The Tenant testified that on one occasion, J.L. attended the Residential Property to perform a repair on the washing machine. The Tenant testified that J.L. concluded that the hose to the washing machine was too short, which caused the leak. The Tenant suggested that this was likely at least partially responsible for the water which would leak into the basement.
- [17] The Tenant testified that on the first day of the tenancy, the Landlord advised that there was an issue with the toilet and that it should not be used. The Tenant testified that it was used later on without issues. However, around June 16, 2023, the Tenant emailed the Landlord to inform them that the toilet had been clogged and water had backed up into the shower. The Tenant testified that she was able to fix it and advised the Landlord in an email dated June 17, 2023, that it had been fixed. The Landlord replied later that day, stating "Ok, hope it works well!" The Tenant testified that maintenance personnel attended the following day, despite having already advised that the toilet was fixed. The Tenant argued that the \$50.00 maintenance fee was not justified as the Tenant repaired the toilet and advised the Landlord the day before maintenance arrived.

- [18] The Tenant acknowledged that she and her family were responsible for damaging a shower door during the tenancy. She also acknowledged causing minor damage to a portion of the wall. The Tenant also testified that she did not pay the water bills during the tenancy.
- [19] The Tenant testified that she and her family vacated the Residential Property on October 4, 2023 as a result of the various issues with the Residential Property. She acknowledged that she only provided notice to the Landlord on September 29, 2023, that she intended to vacate the Residential Property. The Tenant testified that she did not pay rent for the month of October 2023.
- [20] The Tenant referenced an email from the Representative dated July 20, 2023, which stated in part "If you have made a decision that you don't want to rent this house anymore, when are you going to move? Please let me know." The Tenant suggested that this was permission granted from the Landlord to end the tenancy agreement early.

## Analysis

### Issue i: Does the Tenant owe rent to the Landlord?

- [21] Subsections 19.(1), 51.(3), and 53.(3) of the *Act* state:

**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.*

**51. Termination by agreement**

- (3) *A landlord and a tenant may make a written agreement, other than a tenancy agreement, to end a tenancy.*

**53. Notice for fixed-term tenancy**

- (3) *A tenant may end a fixed-term tenancy by giving the landlord a notice of termination effective on a date that*
- (a) *is not earlier than one month after the date the landlord receives the notice;*
  - (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and*
  - (c) *is the day before the day that rent is payable under the tenancy agreement.*

- [22] The Officer finds that based on the undisputed testimony of the Landlord and Tenant, the Tenant did not pay rent for the month of October 2023. The Officer notes that the tenancy agreement was a fixed term from June 1, 2023, to May 31, 2024. The Officer finds that the Tenant gave notice on September 28, 2023 to the Landlord that she planned to vacate the Residential Property, and that she vacated on October 4, 2023.
- [23] The Officer finds that the Landlord and Tenant did not have a written agreement to end the tenancy agreement on October 4, 2023, and that the Tenant did not provide proper notice to end the tenancy pursuant to subsection 53.(3) of the *Act*. The Officer finds that the Representative inquiring with the Tenant as to when she would move does not constitute a written agreement to end the tenancy agreement pursuant to subsection 51.(3) of the *Act*.
- [24] The Officer finds that the Landlord arranged for new tenants to enter a tenancy agreement beginning on November 1, 2023. Therefore, the Officer finds that the tenancy agreement with the Tenant ended on October 31, 2023. The Officer notes that the Tenant admitted that she did not pay rent for October 2023.

[25] Sub-subsections 85.(1)(b) of the Act, which states:

**85. Powers of the Director**

- (1) *After hearing an application, the Director may make an order*
  - (b) *directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord; and*

[26] The Officer concludes that the Tenant did not pay rent for the month of October 2023 and the Landlord is entitled to payment for outstanding rent in the amount of **\$2,650.00**.

**Issue ii: Is the Landlord entitled to retain the security deposit?**

[27] Subsections 28.(3), (4), (5), 39.(2), 40.(1), (3), and 85.(1)(j) 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.*

**85. Powers of the Director**

- (1) After hearing an application, the Director may make an order*
  - (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);*

[28] 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 \$2,650.00, plus accrued interest in the amount of \$35.58 as of the date of this order, December 14, 2023.

[29] The Officer's findings for each claim are as follows.

**Washing Machine Repair**

[30] The Officer finds that the Landlord has failed to establish that the repairs made to the washing machine were due to improper usage by the Tenant. The Officer notes the testimony of the Tenant that J.L. attended the Residential Property to make a repair and disclosed that the pipes were too short for the washing machine, leading to issues. The Officer further notes the Tenant's video of water pouring out of a ceiling light and onto the floor within the Residential Property. The Officer finds that this suggests there were pre-existing water flow and plumbing deficiencies within the Residential Property.

[31] The Landlord's claim is denied.

**Toilet Repair**

[32] The Officer finds that the Landlord has failed to establish that the Landlord is entitled to claim against the security deposit for costs incurred to repair a toilet within the Residential Property. The Officer notes the testimony of the Tenant that she fixed the toilet herself. The Officer further notes the copy of the email sent to the Landlord advising that the toilet has been fixed, and the response from the Landlord acknowledging the repair. Further, the Officer notes that the Landlord failed to provide information to explain how \$57.50 was determined as an appropriate expense to claim.

[33] The Landlord's claim is denied.

**Shower Door Replacement**

[34] The Officer finds that, based on the admission of the Tenant, the shower door was broken by the Tenant.

- [35] The Officer notes that the Landlord failed to provide an individualized receipt indicating the cost of replacing the shower door. The Officer notes that costs for the shower door are indicated in two cost headings, one for repainting, trim work and repairing the shower door for \$500.00, and another labeled "materials" for \$150.00, which the Landlord testified included material costs for the shower door and painting. The Officer is unable to determine how costs were allocated within these headings toward the shower door.
- [36] The Officer finds that the Landlord's claim is allowed in part and the Landlord is entitled to **\$150.00** for shower door replacement costs.

#### **Paint**

- [37] The Officer finds that, based on the photographic evidence and admission of the Tenant, two areas of walls were damaged which the Landlord had to repaint.
- [38] The Officer notes that as with the shower door replacement, the Landlord failed to provide individualized receipts indicating the cost of painting the portions of the walls. The Officer notes that costs for painting are indicated in two cost headings, one for repainting, trim work and repairing the shower door for \$500.00, and another labeled "materials" for \$150.00, which the Landlord testified included material costs for the shower door and painting. The Officer is unable to determine how costs were allocated within these headings toward painting. The Officer notes that the photographic evidence shows the damage as exceeding the standard of reasonable wear and tear, although the surface area was not very large.
- [39] The Officer finds that the Landlord's claim is allowed in part and the Landlord is entitled to **\$100.00** for painting costs.

#### **Water Bill**

- [40] The Officer finds that based on the evidence, specifically, the copy of the tenancy agreement and the Tenant's testimony, paying the water bill was the responsibility of the Tenant under the tenancy and the Tenant failed to pay it. The Officer notes the Tenant's acknowledgment that she did not pay the water bill during the tenancy.
- [41] The Officer notes that the Landlord submitted one water bill dated September 12, 2023. The Officer finds that there was a total amount owing by that point of \$251.95.
- [42] The Officer notes that the Landlord is claiming a further \$83.00 as an estimate of the additional water bill expense owing as of October 4, 2023. The Officer finds that this claim is speculative and unsupported by evidence.
- [43] The Officer finds that the claim is allowed in part and the Landlord is entitled to **\$251.95** in unpaid water bill expenses.
- [44] The Officer finds that the Landlord has established a valid claim against the Tenant's security deposit and interest in the amount of **\$501.95**. Therefore, the Officer deducts the entire security deposit and accrued interest to offset the amount of compensation owed, pursuant to subsection 85.(1)(j) of the *Act*. The Application is allowed in part and the Officer's calculations are as follows:

Item	Amount
Rent Owing	\$2,650.00
Unpaid Electricity Bills	\$251.95
Shower Door Replacement Costs	\$150.00
Painting Costs	\$100.00
Total Expenses	\$3,151.95
Less Security Deposit	(\$2,650.00)
Less Interest (06/01/23 – 12/14/23)	(\$35.58)
Less Total	(\$2,685.58)
Award to Landlord	\$466.37

### Conclusion

[45] 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.*

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

[47] The Application is allowed in part.

[48] The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$2,685.58 to offset the compensation award in this Order.

[49] The Tenant shall pay the Landlord the balance owing of \$466.37, forthwith.

[50] **Order LD23-590 will be served to the parties by email on December 14, 2023.**

### IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$2,685.58 to offset the compensation award in this Order.
- B. The Tenant shall pay the Landlord the balance owing of \$466.37, forthwith.
- C. A certified copy of Order LD23-590 may be filed in the Supreme Court and enforced by Sheriff Serviced as permitted by the *Act*.

**DATED** at Charlottetown, Prince Edward Island, this 14th day of December, 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.