

Introduction

- [1] On November 1, 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 making a claim against the security deposit and accrued interest.
- [2] The Landlord is applying to keep the security deposit of **\$800.00** plus accrued 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 30, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlord, a representative for the Landlord (“S.S.”), and the Tenant participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] On May 31, 2023, the parties entered into a written one-year fixed-term tenancy agreement. The Residential Property is a single unit in a multi-unit apartment building. Rent was \$995.00 due on the first day of each month. A security deposit of \$800.00 was required and paid on May 31, 2023.

Landlord’s Evidence and Submissions

- [5] The Landlord submitted sixteen pages of documentary evidence, including a copy of excerpts from the tenancy agreement, receipts, and a video of the interior of the Residential Property.
- [6] The Landlord argued that the Tenant illegally sublet the rental unit without the Landlord’s permission and the Tenant was subsequently evicted on October 31, 2023. The Landlord testified that the Tenant and his subtenants caused significant damage to the rental unit. The Landlord is alleging that the Tenant and his subtenants caused \$3,754.76 in damages and he is seeking to keep all of the security deposit and accrued interest to offset this amount.
- [7] The Landlord and S.S. testified that at the end of the tenancy, they performed a very quick and rushed inspection with the Tenant on October 31, 2023. They gave a cheque for the security deposit to the Tenant, however, it was mistakenly in the amount of \$1,000.00. The Landlord later contacted the Tenant to exchange the \$1000.00 cheque for a cheque in the proper amount of \$800.00.
- [8] The Landlord testified that it soon became clear that the uncleanliness and damage within the Residential Property were more than originally assessed. The Landlord testified that he contacted his bank to cancel the \$800.00 cheque. The Landlord submitted the Application to retain the security deposit the next day, November 1, 2023. The Landlord continues to hold the full amount of the security deposit.
- [9] The Landlord submitted that the Tenant left the Residential Property in a very unclean condition beyond the standard of reasonable wear and tear. The Landlord submitted a video showing dirt and uncleanliness within the kitchen of the rental unit. The Landlord submitted a copy of a cheque in the amount of \$210.00 for the stated reason “clean apt. 12”. The Landlord is further claiming \$862.50 for painting costs to repaint walls in the kitchen and living room and submitted an invoice and a cheque in the amount of \$862.50 for services by a painting company.

- [10] The Landlord is claiming \$832.58 to replace the stove in the rental unit's kitchen. The Landlord testified that the Tenant left the stove in a filthy condition with food baked into its surface, and referred to the submitted video evidence. The Landlord testified that the stove still remained functional. The Landlord replaced the stove and submitted a receipt in the amount of \$832.58 for the new stove.
- [11] The Landlord is claiming \$854.68 for material and labour costs to replace linoleum flooring within the kitchen of the rental unit. The Landlord testified that he discovered a floor in the hole of the kitchen. The Landlord testified that he had to replace the entirety of the kitchen linoleum flooring. The Landlord's submitted video depicts a brown ring in one corner of the kitchen. The Landlord submitted a receipt and invoice for materials and installation in the amount of \$854.68.
- [12] The Landlord is also claiming \$995.00 for one month's lost rent, due to the Residential Property being unavailable to rent during November 2023, while repairs and cleaning were being performed.

Tenant's Evidence and Submissions

- [13] The Tenant submitted one page of written arguments as documentary evidence.
- [14] The Tenant acknowledged that he had sublet the rental unit without permission from the Landlord. The Tenant argued that he and the subtenants were not responsible for damage within the rental unit. He testified that he was told by the Landlord that the Residential Property was a 50-year-old building. Therefore, significant wear and tear should be expected. The Tenant testified that at the end of the tenancy, he and his subtenants cleaned the whole rental unit thoroughly.
- [15] The Tenant testified that on October 31, 2023, he, the Landlord, and S.S. performed an exit inspection. The Tenant testified that this inspection was thorough and not rushed. After it was complete, S.S. shook his hand and gave him the cheque for his security deposit.
- [16] The Tenant testified that he was later contacted by the Landlord to tell him that he was mistakenly given a \$1,000.00 cheque instead of an \$800.00 cheque. He testified that he later obtained an \$800.00 cheque from the Landlord and cashed it, but this amount was later withdrawn from his bank account.
- [17] The Tenant testified that no inspection was performed at the beginning of the tenancy.

Analysis

- [18] 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.*
- [19] A tenant's responsibilities are pursuant to subsections 28.(3), (4), (5), and 39.(2) of the Act, which 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.*

[20] 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 \$800.00, plus accrued interest in the amount of \$10.79 as of the date of this order, December 14, 2023.

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

Stove

[22] The Officer finds that the Landlord has failed to establish that the stove required replacement. The Officer notes the testimony of the Landlord that the stove was still functional after the tenancy ended. The Officer notes the Landlord's testimony that the stove was extremely dirty due to improper use by the Tenant's subtenants. However, the Officer notes that the Landlord's video evidence, while showing the stove to be dirty, does not show the stove to be unsalvageable.

[23] The Officer finds that the claim is allowed in part. The Officer finds that the Landlord is entitled to **\$120.00** in compensation as a reasonable expense that would have been incurred to clean the stove, rather than replace it. The Officer finds this figure based upon an estimate of four hours to clean the stove at a labour cost of \$30.00 per hour.

Cleaning

- [24] The Officer finds that the Landlord has established on the evidence that the Tenant and his subtenants left the Residential Property in a state of uncleanliness beyond the standard of normal wear and tear. The Officer notes substantial dirt and uncleanliness visible in the Landlord's submitted video, as well as the Landlord's copy of a cheque in the amount of \$210.00 to clean the apartment.
- [25] The Officer finds that the Landlord's claim is allowed and is entitled to **\$210.00** in compensation for cleaning costs.

Painting

- [26] The Officer finds that the Landlord has established on the evidence that the Tenant and his subtenants left the walls of the kitchen in the Residential Property in a state of uncleanliness and damage beyond that of reasonable wear and tear. The Officer notes significant dark marks visible on several different areas of the kitchen walls in the Landlord's submitted video, as well as a bill submitted by the Landlord for painting in the kitchen and living room in the amount of \$862.50. However, the Officer finds only a minor mark in the living room which constitutes reasonable wear and tear. Therefore, the Officer reduces the Landlord's claim from \$862.50 to \$500.00.
- [27] The Officer finds that the Landlord's claim is allowed in part and is entitled to **\$500.00** in compensation for painting costs.

Flooring Repair

- [28] The Officer finds that the Landlord's has failed to establish that the Tenant or his subtenants damaged the flooring of the kitchen of the Residential Property beyond that of normal wear and tear. The Officer notes a dark ring visible on the floor of the kitchen in the Landlord's submitted video. However, the Officer finds that based on the lack of evidence as to the condition of the Residential Property at the beginning of the tenancy, he is unable to determine whether the flooring damage occurred during the tenancy. Further, the Officer finds that even during the cursory inspection performed with the Tenant at the end of the tenancy, this ring should have been visible to the Landlord.
- [29] The Landlord's claim is denied.

Month's Rent Lost

- [30] The Officer finds that the Landlord's has failed to establish that he is entitled to compensation for the loss of one month's rent. The Officer notes that the Tenant vacated the Residential Property due to the Landlord's decision to evict. Further, the Officer is unable to determine based on the evidence, whether the time taken to replace flooring in the kitchen was due to the Tenant's actions.
- [31] The Landlord's claim is denied.
- [32] The Application is allowed in part. The Officer's calculations are as follows:

Item	Amount
Stove Cleaning Costs	\$120.00
Cleaning Costs	\$210.00
Painting Costs	\$500.00
Total Costs	\$830.00
Less Security Deposit	(\$800.00)
Less Interest (05/31/23 – 12/14/23)	(\$10.79)
Less Total amount	(\$810.79)
Total amount awarded to Tenant	\$810.79

[33] 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.

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

[35] The Officer notes that there is an additional \$19.21 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 in the Application.

Conclusion

[36] The Application is allowed in part.

[37] The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$810.79.

[38] **Order LD23-591 will be served to the parties by e-mail 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 \$810.79.

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.