

Introduction

- [1] On November 21, 2023, the Landlords filed a Landlord Application to Determine Dispute (Form 2B) (the "Landlord Application") with Rental Office. The Application was filed to request outstanding rent, to retain the security deposit, and for additional expenses not covered by the security deposit.
- [2] On December 7, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlords and Tenants participated.
- [3] All documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with subsection 100.(1) of the *Act*.

Issues to be Decided

- i. Are the Landlords entitled to outstanding rent?
- ii. Are the Landlords entitled to retain the security deposit and to compensation?

Summary of the Evidence

- [4] In February 2023, the parties entered into a written fixed-term tenancy agreement for the Residential Property. Rent was \$2,000.00 due on the first day of the month. A security deposit of \$2,000.00 was required but only \$1,500.00 was paid. The Tenants stated they vacated on November 1, 2023, and the Landlords stated they were not aware the Tenants had vacated until November 6, 2023.

Landlords' Evidence and Submissions

- [5] The Landlords submitted several pages of documentary evidence including text messages, receipts, invoices, and photographs of the Residential Property.
- [6] The Landlords are seeking rent for 6 days in November because the Tenants did not tell the Landlords they had vacated. The Landlords were at the property on October 28, 2023, and the Tenants were still there. The Tenants had been given an eviction notice to vacate on or before October 29, 2023. The Landlords attended the property on November 6, 2023, and found the Tenants had vacated prior to this date. An Order for rent owing for October 2023 has already been granted.
- [7] The Landlords are seeking to retain the security deposit and have the Tenants cover the expenses incurred above the security deposit. The Landlords were required to replace the locks as no keys were left behind. They had to clean the property and take several trips of garbage for disposal. They were required to clean stencils from the walls.
- [8] The Tenants did not leave the curtains and they damaged the curtain rods. The Landlords had to purchase an air purifier because the shed smelled of cigarette and marijuana smoke. The Tenants were responsible for electricity and they changed the electricity back into the Landlords' name on October 26, 2023.
- [9] The oil tank had been filled with oil before the Tenants moved in. 409 litres were refilled after the Tenants vacated, as the Tenants did not fill the oil tank as required in the tenancy agreement. The Landlords are only seeking the Tenants cover the cost of 300 litres of oil and not the 409 litres.

[10] The breakdown of the Landlords costs are as follows:

Item	Cost
Labour and Travel for Cleaning and Repairs	\$966.00
Electricity	\$26.35
Replacement Locks	\$109.87
Missing Curtains	\$350.00
Damaged curtain rails	\$200.00
Oil (300 L @ \$1.38 / litre)	\$414.00
Dump Fees	\$78.97
Air Purifier	\$205.85
TOTAL	\$2,351.04

Tenants' Evidence and Submissions

- [11] The Tenants submitted several pages of documentary evidence including photographs of the Residential Property, their new tenancy agreement, and text messages from a previous tenant. They stated their new tenancy agreement started on November 1, 2023, and they moved out of the Residential Property on that date.
- [12] The Tenants stated they washed the curtains and left them in a bag by the door. The doors were left unlocked so someone could have taken them. The curtain rods are not damaged and are only crooked. They stated the Landlord took too many trips to waste watch for the items that needed disposal. They left the keys in the rental unit so the locks did not need changing.
- [13] They stated the Landlord cannot accurately say how much oil the Tenants should be responsible for. The oil was only at 3/4 when they moved in and the furnace was on between November 1-6 after they left. Text messages submitted by a previous tenant show the previous tenant also smoked in the shed so the Tenants should not be responsible for the smell of smoke.

Analysis

Issue i: Are the Landlords entitled to outstanding rent?

[14] The *Act* states:

Overholding Tenants

74. Landlord entitled to compensation

(1) A landlord is entitled to compensation for a former tenant's use and occupation of the rental unit after the tenancy has been terminated.

- [15] The Application is seeking a finding that the Tenants breached subsection 74.(1) of the *Act* and the Landlords are entitled to rent owing. In such applications, it is the person(s) making the application to prove, on a balance of probabilities, their claim(s). This means the applicant must provide the decision-maker sufficiently clear, convincing and cogent evidence to prove their claim.
- [16] The Officer does not find the Landlords have established that the Tenants were overholding as defined in subsection 74.(1) of the *Act*. The Officer notes it was responsibility of the Landlords to verify if the Tenants had vacated the property after the Tenants' eviction date of October 29, 2023. However, the Landlords did not attend the property between October 28, 2023, and November 6, 2023, to determine if the Tenants had vacated the property. If they had, the Landlords may have been able to access the rental unit prior to November 6, 2023. This part of the Application is denied.

Issue ii: Are the Landlords entitled to retain the security deposit and to compensation?

- [17] The Landlords are seeking to make a claim against the security deposit pursuant to subsection 40.(1) of the Act, which 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.*

- [18] Further, subsections 28.(3), (4) and (5) 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*

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.*

- [19] The Officer comments that in such matters where there is a claim made against the security deposit and for compensation, it is the landlord's burden or onus to prove, on a balance of probabilities, any and all claims made against the security deposit and for compensation. This means that the decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim(s) made.
- [20] The Officer does not find that the Landlords have established their claims for the replacement of the curtains or curtain rails. The Landlords have not provided sufficient evidence, such as receipts or invoices, for the Officer to be able to verify or calculate the cost of the items claimed. This part of the Application is denied.
- [21] The Officer does not find that the Landlords have established their claim for the cost of the air purifier. The Landlords have not provided sufficient evidence, such as photographs, for the Officer to be able to determine the condition of the shed prior to the Tenants moving in. Text messages were also submitted from a former tenant stating she had smoked in the shed prior to the Tenants moving in. This part of the Application is denied.
- [22] The Officer finds that the Landlords have established their claim for the reimbursement for part of the electricity costs. The Officer notes the Landlords' testimony and documentary evidence assisted in establishing this claim. The Landlords are claiming from October 26, 2023, to November 2, 2023, in the amount of \$26.35, however the Tenants stated they vacated on November 1, 2023.

- [23] Therefore, the Officer finds the Landlords are entitled to reimbursement of the electricity costs from October 26, 2023, to November 1, 2023, in the amount of **\$22.58**, calculated as:

Oct 26 – Nov 2 = 7 days / \$26.35 = \$3.76 per day
Oct 26 – Nov 1 = 6 days x \$3.76 per day = \$22.58

- [24] The Officer finds that the Landlords have established they are entitled to reimbursement for their remaining claims. The Officer notes the Landlords' testimony, photographs, and documentary evidence, assisted in establishing these claims. The Officer finds the Landlords are entitled to compensation in the amount of \$1,591.42 and this part the Application is allowed. The calculations for all claims are as follows:

Item	Cost
Labour and Travel for Cleaning and Repairs	\$966.00
Electricity	\$22.58
Replacement Locks	\$109.87
Oil (300 L @ \$1.38 / litre)	\$414.00
Dump Fees	\$78.97
TOTAL	\$1,591.42

- [25] The Officer therefore finds that the Landlords have established a valid claim to retain the security deposit (\$1,500.00) plus accrued interest (\$32.67). The Officer adjusts the interest accrued to the date this Order is issued. The security deposit and accrued interest is offset from the Landlords' expenses, leaving \$58.75 owed to the Landlords. The calculations are as follows:

Landlord's Expenses	\$1,591.42
Less Security Deposit	(\$1,500.00)
Less Interest (Feb. 3/23 – Dec. 18/23)	(\$32.67)
Total Owing to Landlords	\$58.75

Conclusion

- [26] The Application is allowed in part.
- [27] The Landlords are entitled to \$1,591.42 in compensation from the Tenants.
- [28] The Landlords are entitled to retain the security deposit (\$1,500.00) plus accrued interest (\$32.67), totaling \$1,532.67
- [29] 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);

[30] The Landlords' compensation is offset from the security deposit and accrued interest, calculated as (\$1,591.42 - \$1,532.67), leaving **\$58.75** in compensation owed to the Landlords.

[31] The Tenants shall pay the Landlords **\$58.75** on or before January 31, 2024.

IT IS THEREFORE ORDERED THAT

A. The Landlords shall retain the security deposit and accrued interest in the amount of **\$1,532.67**.

B. The Tenants shall pay the Landlords **\$58.75** on or before January 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 18th 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.