

Introduction

- [1] On November 15, 2023 the Representative filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office").
- [2] The purpose of the Application is to make a claim against the security deposit in the amount of **\$500.00** plus interest, pursuant to subsection 40.(1) of the *Residential Tenancy Act* (the "Act").
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [4] On December 7, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Representative appeared, representing the Landlord. The Tenant did not appear and did not have a representative at the hearing.

Issue to be Decided

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

Summary of the Evidence

- [5] In September 2020 the parties entered into a written fixed term tenancy agreement for a rental unit on the Residential Property. The tenancy converted to a month-to-month agreement. Rent was \$943.00 due on the first day of the month. A security deposit of \$500.00 was required and paid.
- [6] The Tenant vacated the rental unit and the Residential Property on November 2, 2023 due to an eviction being upheld by the Rental Office (see Order LD23-461). The tenancy agreement was ordered to be terminated effective 5:00 p.m. on October 31, 2023. With the permission of the Landlord, the Tenant was permitted to over hold until November 2, 2023 when the Tenant finally vacated.

Landlord's Evidence and Submissions

- [7] The Landlord submitted 41-pages of documents into evidence, including photographs of the rental unit, invoices and receipts.
- [8] The Representative testified that the Tenant left the rental unit in a state below ordinarily clean and required numerous hours to clean. The evidence included timesheets of the hours required by the Landlord's staff to clean the rental unit. The cost associated to cleaning was \$560.00.
- [9] There was significant damage to the rental unit's front door. The damage required a full replacement of the door. The invoice for the cost of replacement has been put into evidence and the door has since been replaced. The Representative testified that the damage was caused by law enforcement needing to kick in the door because a permitted occupant did not open the door during a wellness check. The cost associated with the replacement of the door is \$558.12.
- [10] The photographs submitted into evidence demonstrate additional damage to the rental unit besides the door. Also, the photographs demonstrate garbage and food left behind in the rental unit, which required being removed by the Landlord's staff.

Tenant's Evidence and Submissions

- [11] The Tenant did not participate at the hearing. The Tenant did not provide any evidence and did not provide any submissions (oral or written) for the Application.

Analysis

- [12] 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.

- [13] 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.*

- [14] The Officer comments that in such matters where there is a claim made against the security deposit, it is the landlord's burden 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.

- [15] The Officer concludes that the Landlord is entitled to keep the Tenant's security deposit and interest. The Officer comes to this conclusion based on the undisputed testimony of the Representative and the photographic evidence presented. The Officer is satisfied by the evidence, that the condition of the rental unit was below ordinarily clean at the time the Tenant vacated. Further, the Officer is also satisfied by the evidence, that the damage to the rental unit at the time the Tenant vacated is not reasonable wear and tear.

- [16] When quantifying the damages, the Officer is satisfied by the evidence, that the Landlord's expenses are beyond the total amount of the security deposit and interest.

- [17] However, the Officer makes such comment that in the Application the Landlord selected item (e) to *make a claim against the Tenant's security deposit*. Item (g) of the Application "Other" was left blank. The particulars of the Application state that the Landlord is claiming against the security deposit for numerous listed issues. Although the particulars state that the total cost of cleaning and repairs for the rental unit was beyond the security deposit, the Application does not make it clear that the Landlord was also seeking an amount above the security deposit. As a result, it would not be procedurally fair for the Officer to order an amount above the security deposit in this decision.
- [18] Therefore, the Officer concludes that the Landlord is entitled to retain the full amount of the Tenant's security deposit and interest due to the costs associated with cleaning and replacing the rental unit's door. The calculations are as follows:

Item	Amount
Security Deposit	\$500.00
Interest (01/09/20 – 19/12/23)	\$15.01
Total Amount awarded to Landlord	\$515.01

- [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.
- [22] The Landlord shall retain the Tenant's security deposit, plus interest in the amount of **\$515.01**.
- [23] **Order LD23-604 will be served to the parties by e-mail on December 19, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the Tenant's security deposit, plus interest in the amount of **\$515.01**.

DATED at Charlottetown, Prince Edward Island, this 19th 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.