

Introduction

- [1] On September 11, 2023, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “First Application”) with the Residential Tenancy Office (the “Rental Office”). The First Application is seeking an order directing the Tenant to pay outstanding rent in the amount of **\$1,824.00**.
- [2] On November 9, 2023, the Landlord filed another *Landlord Application to Determine Dispute* (Form 2(B)) (the “Second Application”) with the Rental Office. The Second Application is seeking to keep the entirety of the security deposit of **\$1,000.00** plus accrued interest in compensation for damages to the rental unit.
- [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 5, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). A representative for the Landlord (the “Representative”) participated in the hearing. The Tenant did not participate in the hearing. The Rental Office telephoned the Tenant, left a message, sent an email, and waited ten minutes before proceeding with 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

- [5] In April 2021, the Landlord and the Tenant entered into a written one-year fixed-term tenancy agreement for the Residential Property. After the conclusion of the fixed-term, the tenancy converted to a month-to-month tenancy. The Residential Property was one-half of a duplex. Rent was \$1,658.00 due on the first day of the month. A security deposit of \$1,000.00 was required and paid.

Landlord’s Evidence and Submissions

- [6] The Landlord submitted 20 pages of documentary evidence, including invoices, copies of e-transfer records, copies of redacted bank records, and photographs.
- [7] The Representative testified that on October 28, 2023, the Tenant was given an eviction notice for non-payment of rent, shortly after which he vacated the rental unit. The Representative testified that the Tenant owes \$1,824.00 in unpaid rent, consisting of \$8.00 owing from August 2023, \$158.00 from September 2023, and \$1,658.00 from October 2023. The Landlord submitted into evidence copies of redacted bank records which showed these amounts owing.
- [8] The Landlord is also seeking to retain the full amount of the security deposit and accrued interest in compensation for damages to the Residential Property caused by the Tenant.
- [9] The Representative testified that the Tenant left the Residential Property in an extremely damaged and unclean state. Various spills and messes were left untouched on the floors of the Residential Property. The stove was extremely unclean. The Landlord hired a cleaner to clean the interior of the Residential Property. The Landlord submitted e-transfer records for cleaning expenses dated November 9 and November 14, 2023, in the total amount of \$375.00

- [10] She stated that walls throughout the rental unit were heavily damaged, with with large areas of paint stripped and exposed drywall being visible. Extensive painting was required to repair the Residential Property. The Landlord submitted three receipts from a paint store for painting materials, totaling \$835.37.
- [11] Several doors had significant damage. One doorknob was missing. One door had to be replaced as it had a hole through the middle of it. The Landlord submitted an invoice from a hardware store for a replacement door in the amount of \$130.16.
- [12] The heat pump was damaged and not functional. The Landlord paid to have the heat pump professionally repaired. The Landlord submitted an e-transfer record dated November 14, 2023 for a heat pump repair in the amount of \$184.00.
- [13] The Landlord submitted various photographs which showed substantial damage to walls, doors, and other areas within the Residential Property.

Tenant's Evidence and Submissions

- [14] The Tenant did not submit any documentary evidence and did not participate in the hearing.

Analysis

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

- [15] The Officer notes subsection 19.(1) and sub-subsection 85.(1)(b) of the Act, which 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.*

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.*

- [16] The Officer finds that based on the evidence, specifically, the copies of the Landlord's bank records and the undisputed testimony of the Representative, the Landlord has established that the Tenant owes rent in the amounts of \$8.00 for August 2023, \$158.00 for September 2023, and \$1,658.00 for October 2023. The Officer finds that the Tenant owes rent to the Landlord in the total amount of \$1,824.00.

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

- [17] The Second Application is 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*
- (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.*

[19] The Officer notes that in this matter where there is a claim made against 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 and accrued interest. This means that the decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claims made against the security deposit.

Claim: Cleaning Costs - \$375.00

[20] The Representative testified that the Tenant left the Residential Property in a damaged and unclean state far beyond the standard of reasonable wear and tear. The Landlord submitted photographs of the interior of the Residential Property which showed significant mess and damage in multiple rooms. The Landlord submitted e-transfer records for cleaning expenses dated November 9 and November 14, 2023, in the total amount of \$375.00

[21] The Officer concludes that the Landlord provided sufficient evidence to establish its claim that the unclean condition in the Residential Property was beyond reasonable wear and tear. The claim in the amount of \$375.00 is allowed.

Claim: Door Replacement Costs – 130.16

[22] The Representative testified that the Tenant significantly damaged a door within the Residential Property which had to be replaced. The Landlord submitted photographs of the damaged door which showed holes in the centre of the door. The Landlord additionally submitted an invoice from a hardware store for a replacement door in the amount of \$130.16.

[23] The Officer concludes that the Landlord provided sufficient evidence to establish its claim that the damage to the door was beyond normal wear and tear, and that it had to be replaced. The claim in the amount of \$130.16 is allowed.

Claim: Painting Costs - \$835.37

- [24] The Representative testified that the Tenant had stripped large areas of paint off numerous walls within the Residential Property. The Landlord submitted multiple photographs showing significant damage to walls in multiple rooms of the Residential Property, including large areas of exposed drywall. The Landlord submitted three receipts from a paint store for painting materials, totaling \$835.37.
- [25] The Officer concludes that the Landlord provided sufficient evidence to establish its claim that the damage to the walls was beyond normal wear and tear, and that the painting expenses were justified. The claim in the amount of \$835.37 is allowed.

Claim: Heat Pump Repair - \$184.00

- [26] The Representative testified that the heat pump within the Residential Property was left in a visibly damaged and broken state. The Representative submitted a photograph of the heat pump, which showed tape on the side of it. The Representative testified that she had to pay to have the heat pump repaired. The Landlord submitted an e-transfer record dated November 14, 2023 for a heat pump repair in the amount of \$184.00.
- [27] The Officer concludes that the Landlord provided sufficient evidence to establish its claim that the damage to the heat pump was beyond normal wear and tear. The claim in the amount of \$184.00 is allowed.
- [28] The Officer notes that the Landlord has established claims for \$1,524.53 in compensation, which is \$498.33 more than the total of the security deposit and accrued interest. However, the Landlord did not request additional expenses above the security deposit and interest other than the outstanding rent in the Application, therefore the claims are limited to the amount of the security deposit and accrued interest.
- [29] The Officer's calculations are as follows:

Item	Amount
Rent Owning	\$1,824.00
Claims Allowed	\$1,026.20
Less Security Deposit	(\$1,000.00)
Less Interest (04/01/21 – 12/21/23)	(\$26.20)
Less Total Amount	(\$1,026.20)
Total Award to Landlord	\$1,824.00

- [30] 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.

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

Conclusion

- [32] The Applications are allowed.
- [33] The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$1,026.20.
- [34] The Tenant shall pay the Landlord \$1,824.00, on or before January 12, 2024.
- [35] **Order LD23-607 will be served on the parties by e-mail on December 21, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$1,026.20.
- B. The Tenant shall pay the Landlord \$1,824.00, on or before January 12, 2024.
- C. A certified copy of Order LD23-607 may be filed in the Supreme Court and enforced by Sheriff Serviced as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, this 21st day of December, 2023.

(sgd.) Colin Trewin
Colin Trewin
Residential Tenancy Officer

NOTICERight 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.