

Introduction

- [1] On October 3, 2023, the Landlords filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The purpose of the Application is for rent owing and to make a claim against the security deposit.
- [2] 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 December 14, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Landlord and the Tenant appeared representing themselves.

Issues to be Decided

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

Summary of the Evidence

- [4] In March 2023 the parties entered into a verbal month-to-month term tenancy agreement for the Residential Property. Rent was \$1,350.00 due on the first day of the month. A security deposit of \$500.00 was required and paid. The Tenant vacated the Residential Property on October 1, 2023.

Landlords' Evidence and Submissions

- [5] The Landlord submitted several pages of documents into evidence, including photographs, text messages, invoices, and receipts.
- [6] The Landlord testified the Tenant left the rental unit in a state below ordinarily clean and the rental unit was damaged. There were damages to the walls, carpet, bannister, kitchen cupboards, and curtain rods. There was dog hair everywhere, the fridge was dirty, and garbage was left behind. A quote was received for cleaning and repairs in the amount of \$1,500.00, which exceeds the security deposit.
- [7] The Tenant was required to pay for electricity, which was in the Landlords' name. The Tenant did not pay the electricity bills between May 2023 and September 2023. The bills were: \$59.00, \$148.55, \$149.05, and \$148.88, totaling \$505.48.
- [8] The Tenant did not pay rent for July, August, or September 2023 in the amount of \$1,350.00 x 3, totaling \$4,050.00. Text messages between the parties show the Landlords were requesting the Tenant pay the outstanding rent. The Landlords kept written records of the rent which was paid and not paid.
- [9] The Landlord stated prior to renting to the Tenant, she had rented the unit for \$1,110.00 per month. She stated \$1,350.00 is a fair price for the size and location of the rental unit. No paperwork was served on the Tenant or submitted to the Rental Office to apply for the additional rent increase.

Tenant's Evidence and Submissions

- [10] The Tenant submitted several pages of evidence including photographs, a water test, and submissions from several individuals.
- [11] The Tenant agreed she did not clean when she moved out of the rental unit. The holes in the walls were from hanging photos and from the curtain rods. There was a water test completed which stated there was bacteria in the water at the rental unit.

- [12] The Tenant agreed she owes rent and electricity for September 2023. She stated she paid the rest of the rent and electricity in cash and the Landlords refused to provide receipts. She stated the Landlords illegally raised her rent and she is paying more than the previous tenant.

Analysis

Issue i: Are the Landlords entitled to outstanding rent?

- [13] The Act states:

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.

60. Unpaid utilities

(6) A landlord may treat unpaid utilities charges as unpaid rent...

- [14] The Application is seeking a finding that the Landlords are entitled to rent owing for rent and utilities. 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 and convincing evidence to prove their claim.
- [15] The Officer finds that the Landlords have established that the Tenant owes rent for July, August, and September 2023. However, the Landlord testified she had raised the rent from \$1,100.00 to \$1,350.00 when the Tenant moved into the rental unit in March 2023. The Act states:

PART 3 - WHAT RENT INCREASES ARE ALLOWED

Rent increases

47.(1) A landlord shall not increase rent except in accordance with this Part.

Notice of increase

47.(2) Where a landlord increases the amount of rent payable, the landlord shall give the tenant written notice of the increase

(b) at least three months before the effective date of the increase where the rental unit is rented from month to month or for a fixed term.

Request for additional increase

50.(1) A landlord may request the Director's approval of a rent increase in an amount that is greater than the amount calculated under subsection 49(2) by making an application to the Director under section 75.

- [16] The evidence establishes the Tenant was not served a notice of increase and the Landlord did not request the Director's approval for a rent increase. It is the responsibility of the Landlord to ensure that any rent increase complies with PART 3 of the Act.

- [17] The Officer therefore finds that the Tenant only owes rent in the amount of \$1,100.00 per month (which was the rent before the unlawful rent increase) for July, August, and September 2023. The Officer also finds the Tenant owes electricity from May to September 2023, in the amount of \$505.48. The Landlords have provided sufficient evidence, specifically the text messages between the parties and the Landlords' documentary evidence, to establish the Landlords' claims. The total amount owed by the Tenant is **\$3,805.48**. This part of the Application is allowed.

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

- [18] The Act 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.

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

28. 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.*

28. 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, it is the landlord's burden to prove, on a balance of probabilities, any and all claims made against the security deposit.

- [20] The Officer finds that the Landlords have established they are entitled to retain the security deposit and interest and that their expenses are beyond the total amount of the security deposit and interest. The Officer finds the Landlords have provided sufficient evidence, specifically the photographic and documentary evidence, that the condition of the rental unit was below ordinarily clean and that the damages to the rental unit at the time the Tenant vacated was not reasonable wear and tear.

[21] The calculations are as follows:

Item	Amount
Security Deposit	\$500.00
Interest (01/09/20 – 27/12/23)	\$27.84
Total Amount awarded to Landlord	\$527.84

[22] 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.

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

Conclusion

[24] The Application is allowed.

[25] The Tenant shall pay the Landlords the outstanding rent and utilities in the amount of **\$3,805.48**, on or before January 31, 2024.

[26] The Landlords shall retain the Tenant's security deposit, plus interest, in the amount of **\$527.84**.

IT IS THEREFORE ORDERED THAT

- A. The Tenant shall pay the Landlord the outstanding rent and utilities in the amount of **\$3,805.48**, on or before January 31, 2024.
- B. The Landlords shall retain the Tenant's security deposit, plus interest, in the amount of **\$527.84**.

DATED at Charlottetown, Prince Edward Island, this 27th 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.