

Introduction

- [1] On November 27, 2023, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking 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"). The Landlord, a Landlord witness, and the Tenant participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] In January 2023 the parties entered into a written fixed-term tenancy agreement for the Residential Property. Rent was \$1,600.00 due on the first day of the month. A security deposit of \$1,600.00 was required and paid. The Tenant vacated the Residential Property on November 10, 2023, as the result of an eviction notice.

Landlords' Evidence and Submissions

- [5] The Landlord submitted several pages of documents into evidence, including photographs of the rental unit, an eviction notice, and a cleaning invoice for \$1,440.00.
- [6] The Landlord testified the Tenant left the rental unit in a state below ordinarily clean when she vacated. The rental unit had been newly renovated and the Tenant was only in the unit for ten months. There were items left behind by the Tenant and the Landlord had to make several trips to the dispose of the items. The Tenant turned off the power but had left food in the fridge and freezer. It took the cleaner eight hours to clean the fridge as the food had become rotten. It took 48 hours for the cleaner to clean the entire rental unit at a cost of \$1,440.00 and he is requesting to retain part of the security deposit for this expense.
- [7] The Landlord stated the Tenant was given an eviction notice and she was required to vacate by November 4, 2023. The Tenant did not vacate until November 10, 2023. The Landlord is requesting to retain the rest of the security deposit above the cleaning costs for rent owing for the dates the Tenant remained in the rental unit past the eviction date.
- [8] The Landlord's witness testified she cleaned the rental unit after the Tenant vacated. She stated she worked at it over several days after her regular job. She had to blend paint on the walls and ceiling as there were tape marks and mismatched paint. There were fly droppings in the light fixtures and rust on the floor and counter. There was nail polish and candle liquid on the floor. She was required to take the fridge apart to be able to clean it properly because of the rotten food. She was required to scrub all the walls and the bathroom because they were not clean. She stated it took her 48 hours at \$30.00 per hour, totaling \$1,440.00 to clean the rental unit and she submitted an invoice to the Landlord dated November 23, 2023.

Tenant's Evidence and Submissions

- [9] The Tenant did not submit any documentary evidence. The Tenant stated she did not have time to move all her items as she did not want to be evicted by the Sheriff. There was only a bit of paint transfer on the walls from her chairs and it was not in every room. She does not believe she should be responsible for rent for November. She did not get the Application served on her within 15 days.

Analysis**Issue i: Is the Landlord entitled to retain the security deposit?**

- [10] The Officer begins by referencing the relevant law for the Application.

Return of security deposit

40.(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.*

Retention by landlord, other circumstances

40.(3) A landlord may retain an amount from a security deposit if

- (a) At the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
- (b) After the end of the tenancy, the Director orders that the landlord may retain the amount.*

Consequences of non-compliance

40.(4) Where a landlord does not comply with this section, the landlord

- (a) Shall not make a claim against the security deposit; and*
- (b) Shall pay the tenant double the amount the security deposit.*

Tenant responsible for ordinary cleanliness

28.(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.*

Overholding Tenants***Landlord entitled to compensation***

74.(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.

- [11] The *Act* states a landlord must either return the security deposit or file an application with the Rental Office within 15 days from the end of the tenancy. The Officer notes the 15th day after the tenant vacated would have been November 25, 2023, which was a Saturday. As the Rental Office was not open on that date, the next available date the Landlord was able to file the Application was November 27, 2023, which is what the Landlord did.
- [12] In the alternative, subsection 40.(3)(b) of the *Act* provides an exception and allows some discretion on behalf of the Officer. The Officer notes the parties were in communication after the Tenant had vacated and the Landlord was waiting for the cleaning to be finished to obtain an accurate cost for this expense. On November 27, 2023, after the rental unit had been cleaned, the Landlord filed the Application and notified the Tenant that he was seeking to retain the entire security deposit for the cleaning expense and for rent owing. The Officer therefore finds the matter should be determined on its merits as opposed to relying on the punitive measures prescribed in subsection 40.(4) of the *Act*.
- [13] The Officer notes 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 Officer must be satisfied there is sufficiently clear and convincing evidence to support the claim(s) made against the security deposit. The Officer's findings for each claim are as follows:

Cleaning

- [14] The Officer finds that the Landlord has established he is entitled to retain \$1,440.00 of the security deposit for the cleaning expense. The Landlord has provided sufficient evidence, specifically the testimony of the Landlord and the Landlord's witness as well as the photographic evidence, that the condition of the rental unit was below ordinarily clean at the time the Tenant vacated.

Rent Owing

- [15] The evidence establishes the Tenant was required to vacate the rental unit by November 4, 2023, but she did not vacate until November 10, 2023. The Officer finds that the Landlord has established the Tenant is responsible for rent from November 1, 2023, to November 3, 2023, as the Tenant was occupying the rental unit during that time. Furthermore, the evidence establishes the Tenant was overholding from November 4, 2023, to November 10, 2023, and the Landlord is entitled to \$526.00 of rent owing for those days, calculated as:

Rent per month	\$1,600.00 per month
12 months of Rent (\$1,600.00 x 12)	\$19,200.00 per year
Rent per day (\$19,200.00 / 365)	\$52.60 per day
10 days of rent (\$52.60 x 10)	\$526.00 rent owing

- [16] The Application is allowed. The Officer's calculations are as follows:

Item	Amount
Cleaning Costs	\$1,440.00
Rent Owing	\$526.00
Less Security Deposit	(\$1,600.00)
Less Interest (Jan. 1/23 – Dec. 29/23)	(\$39.67)
Total Expenses Remaining	\$326.33

- [17] Pursuant to subsection 14.(9) of the *Act*, the interest accrued is adjusted to the date this Order is issued.

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.

- [18] The Officer notes that there are \$326.33 in additional expenses owing to the Landlord after deducting the security deposit and accrued interest. However, the Landlord did not request additional expenses above the security deposit and interest in the Application.

Conclusion

- [19] The Application is allowed.
- [20] The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$1,639.67.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$1,639.67.

DATED at Charlottetown, Prince Edward Island, this 29th 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.