

Introduction

- [1] On November 9, 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 retain the Tenant’s entire security deposit. The particulars of the Application state:

“I am the owner of [address]. Due to significant damage and unforeseen losses caused by the evicted [Tenants] I have formally requested a deduction of their \$2500 deposit for repairs cost. However, no response has been received. (fee include 1. backyard repair. 2. septic tank fill with soils. 3. electric wires redone lawn. 4. backyard garbage take away (large amount) 5. deep clean of inside house. 6. lawyer fee.”

- [2] On November 15, 2023 the Rental Office emailed the parties notice of a teleconference hearing scheduled for 9:00 a.m. on December 14, 2023, along with a copy of the Application. The Rental Office confirmed with the Tenants their email address.
- [3] On December 8, 2023 the Rental Office emailed an evidence package to the parties. The Tenants did not file any documentary evidence with the Rental Office regarding the Application.
- [4] On December 14, 2023 the Representative, on behalf of the Landlord, and the Representative’s interpreter participated in a teleconference hearing with the Residential Tenancy Officer (the “Officer”). The Rental Office telephoned the Tenants but there was no response and it was not possible to leave a voicemail message. The Officer waited until 9:15 a.m. before proceeding with the hearing in the absence of the Tenants. The hearing concluded at 10:45 a.m. The Landlord was permitted to submit additional evidence after the hearing.
- [5] The Officer notes that the security deposit plus interest totals \$2,548.12.

Issues to be Decided

- i. Can the Landlord retain the Tenants’ entire security deposit?
- ii. Does the Application permit a claim above the security deposit?

Summary of the Evidence

- [6] The Landlord’s evidence is summarized as follows. The Rental Unit includes a four-bedroom, two-bathroom single family home located on a half-acre of land, which was purchased by the Landlord near the end of December 2022.
- [7] The Landlord and the Tenants entered into a written, fixed term tenancy agreement for the period of April 1, 2023 to March 31, 2024. Rent in the amount of \$2,500.00 was due on the second day of the month and a security deposit of \$2,500.00 was paid on March 26, 2023.
- [8] The Tenants, without the Landlord’s knowledge or consent, filed a Tourist Home – Short-Term Rental Application with the City of Charlottetown and obtained a permit. The Tenants installed four posts with electrical connections in the backyard of the Rental Unit. The Tenants altered the electrical panel in the house to add these electrical connections. The Tenants also had four holes dug in the backyard. The Tenants had four trailers placed in the backyard and connected the septic system of the trailers directly to the holes in the ground.
- [9] People neighbouring the Rental Unit reported to the Provincial Government that a bad smell was coming from the backyard of the unit. The Landlord became aware of the problem when the Representative was contacted by the Provincial Government.

- [10] On September 16, 2023 the Landlord sent the Tenants an Eviction Notice (Form 4(A)) by WeChat and a copy of this notice was also taped to the door of the house. The effective date of the Notice was October 31, 2023 and the trailers left the Rental Unit on this date.
- [11] During the early morning of November 1, 2023 the Tenants moved out of the Rental Unit.
- [12] The house of the Rental Unit was left in an unclean state. The Landlord had three cleaners work three to four hours to make the house ready for new tenants. The Landlord submitted into evidence a receipt from the cleaners dated November 1, 2023, in the amount of \$330.00.
- [13] The Landlord had to pay \$862.50 to disinfect and fill in the sewer holes in the backyard of the Rental Unit. The Landlord submitted into evidence an invoice dated November 7, 2023 for this expense.
- [14] The Tenants left a substantial amount of construction garbage in the backyard of the Rental Unit, as shown in the Landlord's photographs. The Landlord obtained an estimate that the removal cost will be \$1,997.55.
- [15] The Tenants damaged the landscaping of the Rental Unit due to the installation of the trailers and services. The Landlord submitted into evidence a quote for the landscaping repair dated November 23, 2023, in the amount of \$7,360.00.
- [16] The Landlord incurred legal fees of \$656.22 regarding the revocation of the short-term rental permit obtained by the Tenants.
- [17] The Landlord is still waiting for an electrician to fix the electrical panel in the house of the Rental Unit.
- [18] The Landlord filed the Application on November 9, 2023 in order to meet the 15-day deadline for retaining the security deposit. The Landlord did not have part of the damage quotes at the time the Application was filed.

Analysis

- [19] With regard to the Landlord's claim for retention of the security deposit, subsection 39(2) of the *Residential Tenancy Act*, RSPEI 1988, R-13.11 states:

(2) When a tenant vacates a rental unit, the tenant shall

(a) leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear; and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

- [20] The Landlord's undisputed evidence establishes that the Landlord incurred cleaning expenses of \$330.00 because the Tenants did not leave the house of the Rental Unit in a reasonably clean state. The Landlord has also established that a cost of \$862.50 was incurred because the Tenants damaged the backyard of the Rental Unit by installing unauthorized septic holes. The Landlord has also established that the Tenants left extensive construction garbage at the Rental Unit, which will be costly to remove. The balance of the security deposit, in the amount of \$1,355.62, will be credited towards part of the construction garbage removal cost. As a result, the Landlord will retain the Tenant's entire security deposit.

- [21] In the Application the Landlord selected item (e) for retention of the security deposit, which totals \$2,548.12. Item (g) of the Application “*Other*” was left blank. The Application makes it clear that the Landlord is seeking an order for retention of the security deposit. The Application does not state that the Landlord is claiming an amount above the security deposit for damage and cleaning expenses. As a result, it would not be procedurally fair for the Officer to order an amount above the security deposit in this decision.

Conclusion

- [22] The Application is allowed.
- [23] The Landlord will retain the Tenants’ entire security deposit.

IT IS THEREFORE ORDERED THAT

1. The Landlord will retain the Tenants’ entire security deposit, in the amount of \$2,548.12.

DATED at Charlottetown, Prince Edward Island, this 8th day of January, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
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.