

Introduction

- [1] On December 1, 2023, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is making a claim against the security deposit and accrued interest.
- [2] The Landlord is applying to retain the entirety of the security deposit in the amount of **\$800.00**, plus accrued interest as of the date of this order. 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 January 5, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two representatives for the Landlord ("T.S." and "D.R."), and one of the Tenants ("J.S.") participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] On January 1, 2023, the parties entered into a written one-year fixed-term tenancy agreement. The Rental Unit is a single unit in a multi-unit apartment building (the "Residential Property"). Rent was \$1,321.00 due on the first day of each month. A security deposit of \$800.00 was required and paid.

Landlord's Evidence and Submissions

- [5] The Landlord submitted 5 pages of documentary evidence, including a copy of a pest control treatment report and copies of email exchanges between T.S. and the Tenants.
- [6] T.S. stated that the Tenants were responsible for a cockroach infestation within the Rental Unit, which forced the Landlord to incur costs for pest control treatment. T.S. argued that the Landlord should be entitled to claim the cost of the pest control treatment against the Tenants' security deposit and accrued interest.
- [7] T.S. stated that the Landlord was unaware of any issue until the Tenants vacated. On October 24, 2023, the Tenants advised the Landlord that they purchased a house and wished to terminate the tenancy agreement early. The Landlord agreed to end the tenancy agreement as of December 1, 2023, as there were other tenants who had agreed to move in on that date.
- [8] T.S. testified that the Landlord had arranged an inspection with the Tenants on or around November 1, 2023, however, it was immediately clear that the Rental Unit was not sufficiently clean. Therefore, the inspection was not performed and the Tenants were given more time to clean. The Tenants later informed the Landlord that the cleaning was finished and asked where to drop off the keys.
- [9] When the Landlord's staff entered the Rental Unit on or around November 14, 2023, they found it unsatisfactorily clean and infested with cockroaches. The Landlord submitted into evidence a photograph depicting numerous cockroaches within the Rental Unit. T.S. testified that the Landlord immediately sought out pest control services. The pest control company treated the Rental Unit on November 15, November 29, and December 13, 2023. The Landlord submitted into evidence an invoice from the pest control company in the amount of \$747.50.
- [10] T.S. argued that the Tenants must have caused the infestation because the pest control company inspected all the adjacent units in the Residential Property, but only found cockroaches in the Tenants' Rental Unit.

- [11] On November 14, 2023, T.S. informed the Tenants by email that cockroaches were found in the Rental Unit. J.S. responded "We discovered them starting this summer, originating from the rear wall of our refrigerator." T.S. argued that this shows that the Tenants were aware of the cockroach infestation but failed in their duty to inform the Landlord.
- [12] T.S. argued that as a result, the Tenants are also responsible for the Landlord losing a month's rent. As the pest control treatment extended into December, the move-in date for the new tenants had to be pushed back to January 1, 2024. This caused the Landlord to lose one month of rent in the amount of \$1,321.00. T.S. argued that if the Tenants had informed the Landlord of the issue in the summer, the treatment would have been completed well before December, 2023.

Tenants' Evidence and Submissions

- [13] The Tenants submitted 29 pages of documentary evidence, including written arguments and copies of email exchanges with the Landlord.
- [14] J.S. denied causing a cockroach infestation in the Rental Unit. J.S. argued that while they did find two cockroaches in August 2023, they did not think that this constituted an infestation.
- [15] J.S. also argued that the timing of the two cockroaches in the Rental Unit coincided with the Landlord having outdoor pest control treatment done for ants, suggesting the cockroaches entering the Residential Property was due to the Landlord's actions. J.S. further stated that there were small cracks and holes in the wall by the refrigerator that the cockroaches may have entered through.
- [16] J.S. denied seeing any cockroaches in the Rental Unit after August 2023. J.S. stated that they vacated the Rental Unit on November 1, 2023, and hired a cleaning company to clean the Rental Unit before the Landlord took possession of it. J.S. suggested that the cockroaches found in the Rental Unit after they vacated had entered the Rental Unit through a crack in the wall after they had ceased occupying the Rental Unit.
- [17] J.S. further argued that the photograph submitted by the Landlord is not clearly from the Tenants' Rental Unit.

Analysis

- [18] The Landlord is making a claim against the security deposit pursuant to subsection 40.(1) of the Act, it 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.*

- [19] A tenant's responsibilities are pursuant to subsections 28.(3), (4), (5), and 39.(2) of the Act, which 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.*

39. Obligations on vacating

- (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 Officer notes that in this matter where there is a dispute over 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 in the amount of \$800.00, plus accrued interest in the amount of \$20.39 as of the date of this order, January 8, 2024.
- [21] The Officer finds that the tenancy ended on November 30, 2023. The Tenants paid rent for the entire month of November 2023. The Landlord accepted the Tenants leaving the fixed-term tenancy agreement early due to them having found replacement tenants for December 1, 2023.
- [22] The Officer states that at least two cockroaches were found during the time of the tenancy based on the Tenants' own admission. Further, the Officer notes that the Tenants did not advise the Landlord, so an inspection and/or remediation could not occur. The Officer does not find the Tenants' argument compelling that the cockroaches must have entered the Rental Unit between November 1, 2023, and November 14, 2023, after the Tenants ceased to occupy the Rental Unit.
- [23] Although the Officer finds that the Landlord has failed to establish that the Tenants caused the infestation to occur in the Rental Unit, the Officer finds that the Tenants failed to comply with their duty to report when emergency repairs were required within the Rental Unit, pursuant to subsection 29.(2) of the Act, which states:

29. Notice by tenant

- (2) *A tenant of a rental unit shall provide notice as soon as practicable to the landlord or the contact person referred to in subsection (3) when emergency repairs are needed to the rental unit.*

- [24] "Emergency repairs" are defined in sub-subsections 29.(1)(a) and (b) of the Act as repairs that are:
 - (a) *Urgently required; and*
 - (b) *necessary for the health or safety of anyone or for the preservation or use of a residential property.*

- [25] The Officer finds that the pest control treatment qualifies as “emergency repairs” pursuant to sub-subsections 29.(1)(a) and (b), due to the health risk posed by the cockroach infestation and the high risk of it spreading to other areas of the Residential Property. The Officer finds that the Tenants were aware of the infestation as of August 2023, but failed to fulfill their responsibility to inform the Landlord pursuant to subsection 29.(2) of the Act.
- [26] The Officer finds that the Landlord’s plans to have new tenants occupy the Rental Unit as of December 1, 2023 were delayed by one month due to having three pest control treatments performed, which lasted into the middle of December. As a result, the Landlord lost revenue of one month’s rent.
- [27] The Officer notes T.S.’s testimony that if the Landlord had been informed about the infestation at that time, pest control treatments could have started and finished well before December 1, 2023, therefore allowing the new tenants to occupy the Rental Unit as scheduled.
- [28] The Officer notes sub-subsection 85.(1)(d) of the Act, which states:

85. Powers of the Director

- (1) *After hearing an application, the Director may make an order*
(d) *requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement;*

- [29] The Officer finds that the Tenants’ failure to inform the Landlord of the infestation caused the Landlord to incur a loss of one month’s rent, in the amount of \$1,321.00. The Officer finds that the Landlord may retain the entirety of the security deposit and accrued interest to offset the loss incurred.
- [30] The Application is allowed. The Officer’s calculations are as follows:

Item	Amount
December Rent Lost	\$1,321.00
Less Security Deposit	(\$800.00)
Less Interest (01/01/23 – 01/08/24)	(\$20.39)
Less Total amount	(\$820.39)
Total amount awarded to Landlord	\$820.39

- [31] 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.

- [32] The interest accrued is adjusted to the date this Order is issued.
- [33] The Officer notes that there is an additional \$500.61 in total expenses to the Landlord after deducting the security deposit and interest. However, the Landlord did not request additional expenses above the security deposit and interest in the Application.

Conclusion

[34] The Application is allowed.

[35] The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$820.39.

[36] **Order LD24-007 will be served to the parties by e-mail on January 8, 2024.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the entirety of the security deposit and accrued interest in the amount of \$820.39.

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

(sgd.) Colin Trewin

Colin Trewin
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.