

Introduction

- [1] On December 5, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”).
- [2] The purpose of the Application is to make a claim against the security deposit in the amount of **\$2,200.00** plus interest, pursuant to subsection 40(1) of the *Residential Tenancy Act* (the “Act”).
- [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 January 5, 2024 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlord appeared, representing themselves. The Tenants did not appear and did not have a representative.

Issue to be Decided

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

Summary of the Evidence

- [5] On August 24, 2023 the Landlord and the Tenants entered into a written fixed term tenancy agreement for the Residential Property. Rent was \$2,200.00 due on the first day of the month. A security deposit of \$2,200.00 was required and paid on August 28, 2023.

Landlord’s Evidence and Submissions

- [6] The Landlord submitted 26-pages of documents into evidence including the tenancy agreement, a copy of the Residential Property’s floor plan, and text message communication between the parties.
- [7] The Landlord testified that the Tenants vacated on November 30, 2023. The Tenants provided insufficient notice to vacate for a fixed term agreement. The Landlord testified that the Tenants provided notice on November 1, 2023. The Landlord testified that a new tenant was found for January 1, 2024, however, rent for December 2023 was lost due to the insufficient notice. The Landlord is seeking to retain the full amount of the security deposit to cover rent and the little cleaning which was required after the Tenants vacated.

Tenants’ Evidence and Submissions

- [8] The Tenants did not participate at the hearing. The Tenants did not provide any evidence and did not provide any submissions (oral or written) for the Application.

Analysis

- [9] The Application is made in accordance to section 75 of the Act and is seeking to make a claim against the security deposit pursuant to subsection 40.(1) of the Act. The relevant law is as follows:

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.*

- [10] Further, subsections 28.(3), (4) and (5) of the Act states:

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.*

- [11] 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. This means that the decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim(s) made against the security deposit.

- [12] Clause 55(3) of the Act states:

Notice for fixed-term tenancy

- (3) *A tenant may end a fixed-term tenancy by giving the landlord a notice of termination effective on a date that*
- (a) *is not earlier than one month after the date the landlord receives the notice;*
- (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and*
- (c) *is the day before the day that rent is payable under the tenancy agreement.*

- [13] The Officer concludes that the Landlord is entitled to keep the Tenants' security deposit and interest. The Officer comes to this conclusion based on the undisputed testimony of the Landlord and the evidence presented. The Officer is satisfied by the evidence that the parties were in a fixed term agreement and the Tenants vacated without proper notice as required by clause 55(3) of the Act.
- [14] Further, the Officer is satisfied that the Landlord mitigated their damages by finding a new tenant as soon as possible. Therefore, the Landlord is entitled to retain the full amount of the Tenants' security deposit and interest to cover for the cost of loss rent in December 2023 and for the miscellaneous cleaning which was required at the end of the tenancy. The Application is allowed.
- [15] The calculations are as follows:

Item	Amount
Security Deposit	\$2,200.00
Interest (28/08/23 – 17/01/24)	\$21.29
Total Amount awarded to Landlord	\$2,221.29

- [16] Pursuant to clause 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.

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

Conclusion

- [18] The Application is allowed.
- [19] The Landlord shall retain the Tenants' security deposit, plus interest in the amount of **\$2,221.29**.
- [20] **Order LD24-016 will be served to the parties by e-mail on January 17, 2024.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the Tenants' security deposit, plus interest in the amount of **\$2,221.29**.

DATED at Charlottetown, Prince Edward Island, this 17th day of January, 2024.

(sgd.) Cody Burke
Cody Burke
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.