

Introduction

- [1] On December 4, 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 a portion of the security deposit in the amount of **\$461.90** 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 11, 2024 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing themselves. The Tenants appeared, representing themselves.

Issue to be Decided

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

Summary of the Evidence

- [5] On September 1, 2023 the parties entered into a 4-month fixed term tenancy agreement for a room in the Residential Property. Rent was \$1,700.00 (\$850.00 for each tenant) due on the first day of the month. A security deposit of \$1,000.00 was required and paid. The Tenants vacated November 30, 2023.

Landlord's Evidence and Submissions

- [6] The Landlord testified that it cost \$923.83 to have a plumber come to the Residential Property twice. The Landlord testified that she split the total cost between the four rooms (tenants) in the Residential Property. The Landlord is seeking to retain \$461.90 for the Tenants' security deposit to cover their share of the cost. The Landlord testified that she returned the remaining \$538.10 balance from the security deposit on December 6, 2023.
- [7] The Landlord testified that the final inspection happened on November 30, 2023. The Landlord testified that the Tenants permitted occupants to live in the Residential Property without her permission. The Landlord testified that other tenants in the Residential Property informed her of the other occupants.
- [8] The Landlord testified that the plumber's invoice describes the work required because the pipes were full of food. The second invoice provided additional detail that "the pipeline is likely to clog again because the pipe has dips and peaks." The Landlord testified that she lived in the Residential Property for three years without any issues in the pipes.

Tenants' Evidence and Submissions

- [9] The Tenant testified that the Landlord has provided no direct evidence nor witness testimony at the hearing to establish her claim. The Tenant testified that the pipes were clogged regularly during their tenancy. The Tenant testified that the Landlord was informed about the pipes clogging and that generally plunging would resolve any clogs. The Tenant denied causing any clogs, and the Tenant denied allowing other people live in the Residential Property.

Analysis

[10] 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.

[11] 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.*

[12] 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.

[13] The Officer concludes that the Landlord is not entitled to keep a portion of the Tenants' security deposit and interest. The Officer comes to this conclusion based on the Landlord not providing sufficient evidence to establish that the actions of the Tenants caused clogging to the Residential Property's pipes. Further, the Officer finds that the evidence, specifically, the Mr. Plumber invoice suggests that the clog is because the pipe has dips and peaks. This suggests to the Officer that it is equally possible that the issue is a design flaw rather than a specific action caused by the Tenants. Therefore, the Application is denied.

[14] The interest accrued over the tenancy is \$7.94.

Conclusion

[15] The Application is denied.

[16] The Landlord shall return \$469.84 to the Tenants forthwith.

[17] **Order LD24-022 will be served to the parties by e-mail on January 19, 2024.**

IT IS THEREFORE ORDERED THAT

A. The Landlord shall return \$469.84 to the Tenants forthwith.

DATED at Charlottetown, Prince Edward Island, this 19th 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.