

Introduction

- [1] On November 3, 2023 the Representative filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed to make a claim against a portion of the security deposit in the amount of **\$517.50**, pursuant to clause 40(1) of the *Residential Tenancy Act* (the "Act").
- [2] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with clause 100(1) of the Act.
- [3] On January 16, 2024 a teleconference hearing was held at 9:00 a.m. before a Residential Tenancy Officer (the "Officer"). The Representative appeared, with legal counsel, representing the Landlord. The Tenant appeared, with a translator, representing themselves.

Issue to be Decided

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

Summary of the Evidence

- [4] On June 1, 2022 the parties entered into a written fixed term tenancy agreement for the Rental Unit. The fixed term expired on June 30, 2023 and converted to a month-to-month agreement. The Rental Unit is situated in a 36-unit building (the "Residential Property"). Rent was \$1,650.00 due on the first day of the month. A security deposit of \$1,650.00 was required and paid on June 1, 2022. The Tenant vacated the Rental Unit on October 31, 2023.

Landlord's Evidence and Submissions

- [5] The Representative submitted documents into evidence including: a *Landlord Condition Inspection Report* (Form 5), an invoice for \$517.50, photographs of the Rental Unit and a copy of a cheque in the amount of \$517.50.
- [6] The Representative testified that on September 27, 2023 the Tenant requested to vacate the Rental Unit on October 31, 2023. The Representative testified that the Witness did the end of tenancy inspection on October 31, 2023. The Form 5 was submitted into evidence and the Witness provided her with his findings during the inspection.
- [7] The Representative testified that there was no damage and no mold concerns at the beginning of the tenancy. The photographs submitted into evidence show a serious mold issue in the Rental Unit's bathroom. The Representative testified that she hired professionals to inspect the Rental Unit and the Residential Property to find the source or the cause for the mold. The Representative testified that there were no leaks found in the roof of the Residential Property, and there were no issues with the plumbing and/or sprinkler system.
- [8] The Representative testified that it cost \$517.50 to remove the mold, paint, replace the baseboard and clean the Rental Unit. The invoice and the payment receipt was submitted into evidence. The Representative testified that she informed the Tenant that the remaining balance of her security deposit is waiting to be picked up at the Landlord's office. The Tenant has yet to pick up the cheque.
- [9] The Witness testified that he inspected the Rental Unit on October 31, 2023 and took the photographs submitted into evidence. The Witness testified that the Rental Unit was not cleaned completely and that he tried to explain the cleaning and mold concerns to the Tenant, however, the Tenant's first language is not English and he was unsure if the Tenant completely understood.

- [10] The Landlord's general argument is that the Tenant breached section 39 of the *Act* and that the evidence shows that the mold is substantial. The Tenant did not inform the Representative of the mold issue. The damage is beyond what is considered normal 'wear and tear'.

Tenant's Evidence and Submissions

- [11] The Tenant testified that she does not agree with the Landlord keeping a portion of her security deposit. The Tenant testified that she noticed the mold beginning to grow approximately two months before she vacated the Rental Unit. The Tenant testified that the Witness checked the mold issue, and that they could not find the cause for the mold. The Tenant denied that the mold was caused by steam in the bathroom. The Tenant testified that the baseboards were normal wear and tear. The Tenant testified that the Rental Unit was cleaned before she vacated. The Tenant admitted to not cleaning all the appliances due to not knowing exactly how to clean them. The Tenant submitted into evidence a written submission, a copy of the tenancy agreement and messages between the parties.

Analysis

- [12] 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.*

- [13] Further, clauses 28(3), (4), (5) and 39(2) of the *Act* 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.*

[14] 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.

[15] The Officer concludes that the Landlord is entitled to keep a portion of the Tenant's security deposit. The Officer relies specifically on the photographic evidence, inspection report and the witness testimony from the Witness to conclude that the Rental Unit was left in a state below ordinary clean and that the damage left was beyond normal wear and tear. Further, the Landlord has provided sufficient evidence to establish its claim in the amount of \$517.50. The Officer relies on the invoice submitted into evidence and the Witness testimony. The Application is allowed.

[16] The calculations are as follows:

Item	Amount
Security Deposit	\$1,650.00
Interest (01/06/22 – 29/01/24)	\$44.19
Total Amount	\$1,694.19
Total Amount Awarded to Landlord	(\$517.50)
Total Amount Returned to Tenant	\$1,176.69

[17] 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.

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

Conclusion

[19] The Application is allowed.

[20] The Landlord shall retain \$517.50 from the security deposit.

[21] The Landlord shall return \$1,176.69 from the security deposit plus interest to the Tenant forthwith.

[22] **Order LD24-033 will be served to the parties by e-mail on January 29, 2024.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$517.50 from the security deposit.
- B. The Landlord shall return \$1,176.69 from the security deposit plus interest to the Tenant forthwith.

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