

Introduction

- [1] On December 11, 2023, the Landlords filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking rent owing and to make a claim against the security deposit.
- [2] All documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with subsection 100(1) of the *Act*.
- [3] On January 23, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlords, three Landlord witnesses, the Tenant, and the Tenant’s counsel participated in the hearing.

Issues to be Decided

- i. Does the Tenant owe rent to the Landlords?
- ii. Are the Landlords entitled to compensation?
- iii. Are the Landlords entitled to retain the security deposit?

Summary of the Evidence

- [4] On November 1, 2023, the parties entered into a written seven month fixed-term tenancy agreement for the Residential Property. Rent was \$1,600.00 due on the first day of the month. A security deposit of \$1,600.00 was paid. The Tenant vacated on November 25, 2023.

Landlords’ Evidence and Submissions

- [5] The Landlords submitted several pages of documents into evidence including a copy of the tenancy agreement, written submissions, photographs, and messages between the parties.
- [6] The Landlords are seeking to retain the \$1,600.00 security deposit as the Tenant broke the fixed term tenancy agreement early without providing proper notice. A clause in the tenancy agreement stated that “failure to stay for the entire 7 months will result in the loss of your deposit.” The Tenant vacated on November 25, 2023. The Landlords calculated it cost them \$1,560.00 of their personal time as a result of the Tenant’s actions and having to find a new tenant.
- [7] The Landlords are seeking \$550.00 in rent owing between December 1, 2023, to December 11, 2023, as the Tenant vacated without providing proper notice. The Landlords stated they did not know when the Tenant was leaving as she kept changing her mind. They advertised the rental unit when they became aware the Tenant was leaving and provided a summary of their time looking for a new tenant. They were able to secure a new Tenant for December 11, 2023, and only charged the new tenant for the remainder of December.
- [8] The Landlords are seeking compensation for \$1,225.00 in damages. The damages the Landlords stated the Tenant caused include: water damage in the bathroom, a broken light fixture in the bunk room, broken blinds in the bunk room, screw holes in the bunks, damage to the queen bed, damage to the tv stand, damage to the BBQ, and damage to two screens in the screen porch. Photographs were submitted of some of the damages. The Landlords stated they did not complete a move in or move out inspection with the Tenant. J.H. stated the Tenant told her the Tenant’s children damaged the screens, blinds, and the light. A submission from the Landlords’ cleaners stated some of the items were not damaged prior to the Tenant moving in.

- [9] The Landlords are seeking compensation for \$115.00 in cleaning costs. The cleaners charged approximately \$20.00 per hour for almost five hours of cleaning. The Tenant did not adequately clean the rental unit and cleaners were required to ready the rental unit for the new tenant. A written statement was submitted from the cleaners as to the condition of the rental unit.

Tenant's Evidence and Submissions

- [10] The Tenant submitted several pages of evidence including photographs, written submissions, and videos of the rental unit.
- [11] The Tenant stated the Landlords cannot retain the security deposit just because there was a clause in the tenancy agreement stating they could, as this is against sections 15 and 17 of the *Act*. The clause in the tenancy agreement should also be void and unenforceable under section 5 of the *Act*. The Landlords' costs for their time are a normal part of a landlord's duties and cannot be passed onto the Tenant.
- [12] The Tenant stated the Officer should draw an adverse inference against the Landlords under section 40(5) of the *Act* because they did not conduct condition inspections at either the start or the end of the tenancy. The Tenant asked the Landlords to inspect the rental unit with her when she vacated but they did not. The Landlords' damage claims and estimates are not supported by any receipts, invoices, or quotes. The Tenant denied damaging the rental unit and stated she did not know how the temporary safety structure to the bunk beds was constructed, as another individual made it for her.
- [13] The Tenant stated her obligation was to leave the rental unit "reasonably clean" as stated in subsection 39(2)(a) of the *Act* and the Tenant complied with that obligation. The Tenant stated the submitted videos and pictures show that the rental unit was in a clean condition when she vacated.
- [14] The Tenant stated the Landlords were obligated to mitigate their losses by seeking a new tenant. On November 18, 2023, the Landlords knew that the Tenant would be vacating the rental unit on December 1, 2023. The Landlords had sufficient time to find a new tenant to occupy the rental unit by December 1, 2023, but unreasonably failed to do so.

Analysis

Issue i: Does the Tenant owe the Landlords rent?

- [15] The Landlords are seeking \$550.00 in outstanding rent from December 1, 2023, to December 11, 2023, as the Tenant vacated the rental unit without providing proper notice prior to the end of the fixed term. A new tenant moved in on December 11, 2023. The *Act* states:

55.(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.

- [16] The Officer finds that the Landlords have established the Tenant did not provide the Landlords at least one month's notice and the Tenant vacated the rental unit prior to the end of the fixed-term. The Officer is satisfied the Landlords have established they mitigated their losses, which is detailed in the breakdown of the Landlords' costs of procuring a new tenant, and were able to secure a new tenant for the rental unit beginning December 11, 2023. The Officer finds the Tenant owes rent from December 1, 2023, to December 10, 2023, as the new tenancy agreement started on December 11, 2023.

- [17] The rent owing is calculated as:

\$1,600.00 per month x 12 months	\$19,200.00 per year
\$19,200.00 / 365 days per year	\$52.60 per day
\$52.60 x 10 days (Dec. 1 – Dec. 10)	\$526.00 rent owing

Issue ii: Are the Landlords entitled to compensation?

- [18] The Landlords are seeking \$1,225.00 in compensation for damages and \$115.00 for cleaning costs. The Officer comments that in such matters where there is a claim made for compensation, it is the landlord's burden or onus to prove, on a balance of probabilities, any and all claims made. This means that the decision-maker must be satisfied there is sufficiently clear and convincing evidence to support the claim(s) made. 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

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.

- [19] The Officer finds that the Landlords have established their claim for the damage to the light fixture. The Landlords and the Landlords' cleaners submitted the light was not damaged prior to the Tenant moving in, and the Landlords provided a receipt for \$130.62 for the cost of the light.
- [20] The Officer does not find the Landlords have established their claims for the remaining damages. Although the Landlords and the Landlords' cleaners submitted that some of the damages were not there prior to the Tenant moving in, the Landlords have not provided sufficient evidence, such as receipts or invoices, for the Officer to be able to verify or quantify the cost of any of the other damages claimed. Such evidence would have been beneficial for the determination of this matter.

- [21] The Officer finds that the Landlords have established their claims for the \$115.00 in cleaning costs. The videos and pictures submitted by the Tenant appear to show that the rental unit was in a reasonably clean condition when she vacated. However, the Landlords' cleaners submitted they had cleaned the rental unit prior to the Tenant moving in and after the Tenant vacated various parts of the rental unit were "sticky" and required cleaning. The Officer notes that such cleaning requirements would not be visible in the Tenant's photos or videos. The Landlords have also quantified the cleaning costs with the written submission of the cleaners.

Issue iii: Are the Landlords entitled to retain the security deposit?

- [22] The Officer comments that in such matters where there is a claim made against 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. This means that the decision-maker must be satisfied there is sufficiently clear and convincing evidence to support the claim(s) made. The Act states:

5. This Act cannot be avoided

Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.

15. Prohibitions respecting security deposits

A landlord shall not

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;*
- (b) require or accept more than one security deposit in respect of a tenancy agreement; or*
- (c) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement.*

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.*

- [23] The Landlords are seeking to make a claim against the security deposit as the tenancy agreement stated that "failure to stay for the entire 7 months will result in the loss of your deposit." However, section 15 the Act prohibits a landlord from including a clause in the tenancy agreement which allows a landlord to automatically keep all or part of the security deposit at the end of the tenancy. Section 5 of the Act states a tenant cannot waive their rights or protections under the Act, which means a tenant cannot agree to something which is contrary to the Act.
- [24] The Landlords estimated that it cost them \$1,560.00 for their time dealing with the Tenant's issues and for procuring a new tenant. The Officer notes that these "costs" are part of a landlord's regular duties for managing a tenant and for procuring a new tenant. These costs cannot be passed onto a tenant or claimed against the security deposit.
- [25] However, as the Officer has already found that the Landlords have established they are entitled to \$526.00 in outstanding rent, \$115.00 in cleaning costs, and \$130.62 in damages, the Officer finds the Landlords are entitled to retain \$771.62 of the security deposit. The remainder of the security deposit plus interest shall be returned to the Tenant. The calculations are as follows:

Item	Amount
Security Deposit	\$1,600.00
Interest (Nov. 1/23 – Feb. 1/24)	\$9.83
Less Rent Owing	(\$526.00)
Less Cleaning Costs	(\$115.00)
Less Damage	(\$130.62)
To be returned to the Tenant	\$838.21

- [26] Pursuant to subsection 14.(9) of the *Act*, the interest accrued is adjusted to the date this Order is issued:

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.

Conclusion

- [27] The Application is allowed in part.
- [28] The Landlords shall retain part of the security deposit in the amount of **\$771.62**.
- [29] The Landlords shall return the remainder of the security deposit plus interest in the amount of **\$838.21** to the Tenant forthwith.

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall retain part of the security deposit in the amount of **\$771.62**.
- B. The Landlords shall return the remainder of the security deposit plus interest in the amount of **\$838.21** to the Tenant forthwith.

DATED at Charlottetown, Prince Edward Island, this 1st day of February, 2024.

(sgd.) Mitchell King

Mitchell King
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.