

Introduction

- [1] On December 12, 2023, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking to make a claim against the security deposit plus additional compensation for repairs.
- [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 25, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord, a Landlord witness, the Tenant, and a Tenant witness participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] On December 8, 2022, the parties entered into a written fixed-term tenancy agreement for the rental unit. Rent was \$1,300.00 due on the first day of the month. A security deposit of \$1,300.00 was paid. The Tenant vacated on November 30, 2023.

Landlord's Evidence and Submissions

- [5] The Landlord submitted several pages of documents into evidence including a repair invoice, an inspection report, and photographs and videos of the rental unit.
- [6] The Landlord stated he and K.M. inspected the rental unit on December 1, 2023, and he completed an inspection report at that time. He observed a smoke by-product on the ceilings, walls, doors, and trim. The bedroom had mismatched paint on the edge walls where a light string had been present. The rental unit had to be painted with several coats of paint due to the condition of the rental unit. The black on the walls was not mold.
- [7] The security deposit is \$1,300.00 however it cost \$1,500.00 to paint and repair the rental unit, which is detailed on the submitted invoice. He is seeking to retain the security deposit and to be compensated the remaining costs above the security deposit.
- [8] K.H. stated he inspected the rental unit with the Landlord. He performed some of the repair work and he was required to wipe, paint, and repair the walls. He stated the black residue on the walls appeared to be soot and he did not observe any mold. He stated it cost \$1,500.00 to complete the painting and repairs.

Tenant's Evidence and Submissions

- [9] The Tenant submitted photographs and videos of the rental unit and messages between the parties into evidence.
- [10] The Tenant stated there was mold in the rental unit the mold would just come back after she cleaned it. She notified the Landlord about the mold and the Landlord provided her with a dehumidifier. She stated she did paint the walls but thought the color would blend better.
- [11] A.B. stated mold grew on their coats in the closet and the mold would keep coming back even after cleaning it. They had to throw items out due to the mold. The range hood in the kitchen did not work. Their candles and incense were not near the walls.

Analysis

Issue i: Is the Landlord entitled to retain the security deposit and to compensation?

- [12] The Landlord is seeking to retain the \$1,300.00 security deposit and is seeking another \$200.00 in compensation as it cost \$1,500.00 to paint and repair the rental unit. The Officer comments that in such matters where there is a claim made for against the security deposit and 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:

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.

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.

- [13] The Officer finds that the Landlord is entitled to keep the Tenant's security deposit and the Landlord is entitled to additional compensation of \$200.00. The Officer relies specifically on the photographic evidence, inspection report, submitted invoice, and the witness testimony from K.M. to conclude that the rental unit was left in a state below ordinary clean and that the damage was beyond normal wear and tear. The Application is allowed.

[14] The calculations are as follows:

Item	Amount
Landlord's Costs	\$1,500.00
Less Security Deposit	(\$1,300.00)
Less Interest (Dec. 8/22 – Feb. 1/24)	(\$35.06)
Amount Owed by Tenant	\$164.94

[15] 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

[16] The Application is allowed.

[17] The Landlord shall retain the security deposit and interest in the amount of \$1,335.06.

[18] The Tenant shall pay the Landlord compensation in the amount of \$164.94 on or before March 1, 2024.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the security deposit and interest in the amount of \$1,335.06.
- B. The Tenant shall pay the Landlord compensation in the amount of \$164.94 on or before March 1, 2024.

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.