

Introduction

- [1] On October 23, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "First Application") with the Residential Tenancy Office (the "Rental Office"). The First Application was filed to make a claim against the security deposit in the amount of **\$725.00** plus interest, pursuant to clause 40(1) of the *Residential Tenancy Act* (the "Act").
- [2] On November 30, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Second Application") with the Rental Office. The Second Application was filed to seek a return of August 2023 rent in the amount of **\$725.00**.
- [3] On November 30, 2023 the Landlord filed another *Landlord Application to Determine Dispute* (Form 2(B)) (the "Third Application") with the Rental Office. The Third Application was filed seeking rent owed in the amount of **\$975.00**.
- [4] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with clause 100(1) of the *Act*.
- [5] On January 18, 2024 a teleconference hearing was held at 11:00 a.m. before a Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing themselves. The Tenant appeared, representing themselves.

Issues to be Decided

- i. Is the Landlord entitled to retain the security deposit?
- ii. Is the Tenant entitled to a return of rent?
- iii. Is the Landlord entitled to rent owing?

Summary of the Evidence

- [6] On or around March 28, 2020 the parties entered into a verbal month-to-month tenancy agreement for the Rental Unit. The Rental Unit is situated in a 4-unit building (the "Residential Property"). Rent was \$725.00 due on the 1st day of the month. A security deposit of \$827.00 was paid. On October 1, 2023 the Tenant vacated the Rental Unit.

Landlord's Evidence and Submissions

- [7] The Landlord submitted numerous documents into evidence including: text messages between the parties, written submissions, and photographs of the Rental Unit.
- [8] The Landlord testified that the Tenant left behind numerous personal items in the Rental Unit. The Landlord testified that he took the photographs submitted into evidence on October 3, 2023. The Landlord testified that the Tenant left the Rental Unit in a damaged and unclean state. The Landlord testified that the Tenant owed \$250.00 from August 2023 rent and \$725.00 for September 2023 rent. The Landlord testified that the Tenant allowed him to keep the security deposit to cover September 2023 rent.
- [9] The Landlord testified that Hurricane Fiona caused damage to the Rental Unit. The Landlord testified that he provided the Tenant with free rent for the following rent (October 2022). The Landlord responded to the Tenant's testimony that when he learned about the leak in the wall in July 2023 he contacted Service Master. A tarp was put over and that resolved the leak until the leak was found.

Tenant's Evidence and Submissions

- [10] The Tenant submitted numerous documents into evidence including written submissions, an Environmental Health Report dated August 30, 2023, and photographs of the Rental Unit.
- [11] The Tenant admitted to the outstanding rent in August 2023. The Tenant testified that she paid \$475.00, however, due to the leak she should not be responsible for August 2023 rent. The Tenant admitted to not paying September 2023 rent and agreed that the Landlord could retain the security deposit to cover September rent.

Analysis

The First Issue – *Is the Landlord entitled to retain the security deposit?*

- [12] The First 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.*

Retention by landlord, other circumstances

- (3). *A landlord may retain an amount from a security deposit if*
- (a) *at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
- (b) *after the end of the tenancy, the Director orders that the landlord may retain the amount.*

- [13] Further, clause 19(1) of the Act states:

19. Tenant shall pay rent when due

- (1) *A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.*

- [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 finds that the First Application is allowed. The Officer notes that the Landlord testified that there was a lot of damage, cleaning required and personal items left in the Rental Unit by the Tenant. The Officer further notes that the First Application was filed with the Rental Office on October 23, 2023 (and the tenancy ended October 1, 2023). The Landlord had 15 days from the end of the tenancy to file the First Application to make a claim against the security deposit.

- [16] However, the Officer finds that the Tenant admitted at the hearing that she permitted the Landlord to retain the security deposit to cover September 2023 rent. Despite the agreement not being in writing, the Officer concludes that the oral testimony from the parties provides sufficient evidence to conclude that the Landlord is exempted under clause 40(3)(a) of the *Act*, and may retain the full amount of the security deposit and interest to cover September 2023 rent.

- [17] The calculations are as follows:

Item	Amount
Security Deposit	\$725.00
Interest (03/28/20 – 02/21/24)	\$27.78
Total Amount	\$752.78
Total Amount Awarded to Landlord	(\$752.78)

- [18] 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.

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

The Second Issue – *Is the Tenant entitled to a return of rent?*

- [20] The Second Application is made in accordance to section 75 of the *Act* and is seeking a return of rent because the Landlord breached clause 28(1) of the *Act*. Clause 28(1) of the *Act* states:

28. *Obligation to repair and maintain*

- (1) *A landlord shall provide and maintain the residential property in a state of repair that*
- (a) *complies with the health, safety and housing standards required by law; and*
 - (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

- [21] In such matters it is the Tenant's burden to prove, on a balance of probabilities, any and all claims made in the Second Application. This means that the decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claims in the Second Application.

- [22] The Officer finds that the Tenant has not provided sufficient evidence to conclude that the Landlord breached clause 28(1) of the *Act*. Therefore, the Tenant is not entitled to a return of rent. The Officer comes to this conclusion after reviewing the documentary evidence, specifically the Environmental Health Report and hearing the testimony from the parties. The Officer finds that the Landlord took reasonable steps to address the issues of the Rental Unit and at times provided free rent to the Tenant. The Second Application is dismissed.

The Third Issue – *Is the Landlord entitled to rent owing?*

- [23] The Officer finds that the Landlord is entitled to rent owing. The Third Application is allowed. The Officer finds that the Tenant admitted to owing \$250.00 for August 2023 rent and not paying September 2023 rent in the amount of \$725.00. Therefore, the Officer finds that the Tenant owes \$975.00 in rental arrears. However, the Officer finds that \$752.78 is deducted from the security deposit and interest.
- [24] The Tenant shall pay the Landlord \$222.22 on or before March 22, 2024.

Conclusion

- [25] The First Application is allowed, and the Landlord shall retain \$752.78 from the security deposit and interest.
- [26] The Second Application is dismissed.
- [27] The Third Application is allowed. The Tenant shall pay the Landlord \$222.22 on or before March 22, 2024.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$752.78 from the security deposit and interest.
- B. The Tenant shall pay the Landlord \$222.22 on or before March 22, 2024.

DATED at Charlottetown, Prince Edward Island, this 21st day of February, 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.