

Introduction

- [1] On January 12, 2024, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office") pursuant to the *Residential Tenancy Act* (the "Act"). The Application was filed:

To request an order directing the Tenant pay outstanding rent;
To make a claim against the security deposit;
To request an order to dispose of the Tenant's personal property.

- [2] Attached with the Application were two *Eviction Notices* (Form 4(A)) (the "Notices"), effective December 31, 2023, ("First Notice") and January 11, 2024, ("Second Notice"). The Notices was given to the Tenant for the following reasons:

You have not paid your rent in the amount of \$1760 (First Notice)
You have failed to comply with a material term of the tenancy agreement (Second Notice)

- [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 February 20, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Landlord Representative and a Landlord witness participated in the hearing. The Tenant did not participate.
- [5] The Representative stated the disposal of the Tenant's property has already been resolved and the Officer does not need to make a determination regarding this matter.

Issues to be Decided

- i. Does the Tenant owe the Landlord rent?
- ii. Is the Landlord entitled to retain the security deposit?

Summary of the Evidence

- [6] On November 1, 2020, the parties entered into a written month-to-month tenancy agreement for the Residential Property. Rent was \$880.00 per month until December 2023 and then it was increased to \$906.00 in January 2024. Rent was due on the first day of the month. A security deposit of \$880.00 was required and paid. The Tenant vacated on January 8, 2024, pursuant to the Notices.

Landlord's Evidence and Submissions

- [7] The Landlord submitted several documents into evidence including messages between the parties, photographs of the rental unit, a rental ledger, and a cleaning invoice. The Representative stated the Tenant failed to pay rent for November 2023, December 2023, and up until January 8, 2024, when the Tenant vacated. The Landlord is seeking \$2,018.84 in unpaid rent.
- [8] The Representative stated the Tenant left the rental unit in an unclean state. There were several items and furniture left behind and there was dog urine and dog feces in the rental unit and on the items the Tenant left behind. It cost \$350.00 to clean the rental unit, \$200.00 for a waste disposal fee for the items left behind, and \$149.50 for a cleaning company to treat the carpet for pet stains, totaling \$669.50.

Tenant's Evidence and Submissions

[9] The Tenant did not participate in the hearing or submit any evidence.

Issue i: Does the Tenant owe the Landlord rent?

[10] The Officer begins by referencing the relevant law for the Application. 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.*

[11] After reviewing the documentary evidence and undisputed testimony of the Representative, the Officer finds that the Landlord has provided sufficient evidence, specifically the submitted rental ledger, to establish that the Tenant has breached subsection 19.(1) of the Act by failing to pay rent for November 2023 and December 2023 (\$880.00 x 2) and part of January 2024 (\$238.29), totaling \$1,998.29. The Officer's calculations for January 2024's rent are as follows:

January rent owed	Amount
Rent per month	\$906.00
Rent per year	\$10,872.00
Rent per day	\$29.78
Rent from January 1 – 8 (8 days)	\$238.29

Issue ii: Is the Landlord entitled to retain the security deposit?

[12] The Landlord is seeking to retain the security deposit for cleaning costs (\$669.50) and rent owing (\$1,998.29). The Officer comments that in such matters where there is a claim made for against the security deposit, 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.

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] After reviewing the documentary evidence and undisputed testimony of the Representative, the Officer finds that the Landlord has provided sufficient evidence, specifically the photographs of the rental unit and submitted invoice, to establish that the Landlord is entitled to retain \$669.50 of the security deposit for cleaning costs. The Officer finds that the Rental Unit was left in a state below ordinary clean and that the damage left was beyond normal wear and tear.
- [14] The Officer further finds that the Landlord is entitled to keep the remaining \$210.50 plus interest of \$28.86 (\$239.36) for rent owing. The Tenant therefore owes \$1,758.93 in outstanding rent (\$1,998.29 - \$239.36). The Officer's calculations are as follows:

Item	Amount
Security Deposit	\$880.00
Interest (Nov. 1/2020 – Feb. 28/2024)	\$28.86
Total Security Deposit and Interest	\$908.86
Less Damages and Cleaning	(\$669.50)
Less Rent Owing	(\$1,998.29)
Total Owed by Tenant	\$1,758.93

- [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 is entitled to retain the security deposit and interest in the amount of \$908.86.

[18] The Tenant shall pay the Landlord \$1,758.93 in outstanding rent on or before March 31, 2024.

IT IS THEREFORE ORDERED THAT

A. The Landlord is entitled to retain the security deposit and interest in the amount of \$908.86.

B. The Tenant shall pay the Landlord \$1,758.93 in outstanding rent on or before March 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 28th 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.