

Introduction

- [1] On December 21, 2023 the Landlord 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 the security deposit pursuant to clause 40(1) of the *Residential Tenancy Act* (the "Act"). Further, the Landlord is seeking a finding that rent is owed.
- [2] The Landlord is seeking to keep the full amount of the security deposit **\$1,700.00** plus interest for cleaning and general repairs and outstanding rent in the amount of **\$1,998.47**.
- [3] All documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with clause 100(1) of the *Act*.
- [4] On February 15, 2024 a teleconference hearing was held at 1:00 p.m. before a Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing themselves. The Tenants did not appear and did not have representation.

Issues to be Decided

- i. Is the Landlord entitled to retain the security deposit?
- ii. Is the Landlord entitled to rent owing?

Summary of the Evidence

- [5] On May 1, 2021 the parties entered into a written fixed term tenancy agreement which converted to a month-to-month agreement. Rent was \$1,717.00 due on the first day of the month. A security deposit of \$1,700.00 was paid.

Landlord's Evidence and Submissions

- [6] The Landlord testified that the Tenants were evicted for non-payment of rent. The Landlord testified that the Tenants vacated on January 5, 2024. The Landlord testified that it cost \$765.00 to clean and remove garbage from the Rental Unit. It cost \$210.45 to repair a sink in the Rental Unit. The Landlord testified that the Tenants also owe \$1,717.00 for December 2023 rent and \$281.47 for five days' rent in January 2024.
- [7] The Landlord submitted invoices and photographs into evidence.

Tenants' Evidence and Submissions

- [8] The Tenants did not submit any evidence and did not participate in the hearing.

Analysis

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

The Second Issue - *Is the Landlord entitled to rent owing?*

- [9] The Application is made in accordance to clause 75 of the *Act* and is seeking to make a claim against the security deposit and interest pursuant to clause 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.*

- [10] 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.*

- [11] 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.

- [12] The Officer finds that the evidence establishes that the Tenants left the Rental Unit damaged beyond what would be considered normal wear and tear. Further, the Officer finds that the Tenants left with outstanding rent arrears. The Application is allowed.

- [13] The calculations are as follows:

Item	Amount
Amount Owed (Arrears + Damage/Cleaning)	\$2,973.92
Security Deposit	(\$1,700.00)
Interest (05/01/21 – 03/01/24)	(\$51.73)
Total Amount Awarded	(\$1,751.73)
Total Amount Owed	\$1,222.19

[14] 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.

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

Conclusion

[16] The Application is allowed.

[17] The Landlord shall retain \$1,751.73 from the security deposit and interest.

[18] The Tenants shall pay the Landlord \$1,222.19 forthwith.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain \$1,751.73 from the security deposit and interest.

B. The Tenants shall pay the Landlord \$1,222.19 forthwith.

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