

Introduction

- [1] On January 12, 2024 the Landlord's representative (the "Representative") 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 compensation above the amount of the security deposit.
- [2] The Landlord is making a claim against the full amount of the security deposit **\$1,425.00** plus interest for damages to the Rental Unit beyond normal wear and tear, and an additional **\$147.60** in compensation.
- [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 20, 2024 a teleconference hearing was held at 11:00 a.m. before a Residential Tenancy Officer (the "Officer"). The Representative appeared on behalf of the Landlord. The Tenant appeared on her own behalf.

Issue to be Decided

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

Summary of the Evidence

- [5] On December 1, 2022 the parties entered into a written fixed term tenancy agreement for the Rental Unit. The Rental Unit is situated in a 20-unit apartment building (the "Residential Property"). Rent was \$1,425.00 due on the first day of the month. A security deposit of \$1,425.00 was paid.

Landlord's Evidence and Submissions

- [6] The Representative testified that the Tenant informed her that she was vacating the Rental Unit on December 31, 2023. After the Tenant vacated, an inspection of the Rental Unit was complete. The Representative testified that there was significant damage to the floor, the screen door was broken, the railing on the balcony was broken, door knobs were broken and the damage from the floor required a full replacement. The Representative testified that there was an inspection report; however, that report was not submitted into evidence. The repairs were not complete at the time of the hearing. The photographs of the Rental Unit were lost due to a corruption of the computer they were on.
- [7] The Representative submitted an invoice into evidence showing \$1,572.60 in damages.

Tenant's Evidence and Submissions

- [8] The Tenant admitted to causing the damage to the Rental Unit's floor. The Tenant testified that a lamp caused the burn and cracking. The Tenant disputed causing damage to the screen door, and the door knobs. The Tenant testified that the damage was already there when she moved into the Rental Unit.

Analysis

- [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, subsections 28(3), (4) and (5) of 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

(b) Proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.

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.*

- [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 Landlord has established part of its claim to retain a portion of the security deposit. The Officer comes to this conclusion based on the undisputed testimony of the parties that the Tenant caused damage to the Rental Unit's floor and bathroom casing. However, the Tenant disputed causing damage to the screen doors, door knobs and balcony. The condition of those items were poor when she moved into the Rental Unit. The Officer finds that it is the Landlord's burden to prove any and all claims made against the security deposit.
- [13] In this case, the Landlord has not provided evidence to prove its claim that the Tenant damaged the screens, door knobs, and balcony railing. The Landlord did not provide any direct and/or objective evidence such as "before and after" photographs of the Rental Unit (preferably time stamped), did not provide an end of tenancy inspection report and did not provide any direct witness testimony to the condition of the Rental Unit at the end of the tenancy.
- [14] Therefore, the Officer finds that the Landlord has only established a claim against a portion of the security deposit. The Application is allowed, in part.
- [15] The calculations are as follows:

Item	Amount
Amount Owed (Damage/Labour + HST)	\$1,249.48
Security Deposit	(\$1,425.00)
Interest (12/01/22 – 12/31/23)	(\$41.23)
Total Amount Awarded	(\$1,249.48)
Total Amount Returned to Tenant	\$217.23

- [16] 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.

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

Conclusion

- [18] The Application is allowed, in part.
- [19] The Landlord shall retain \$1,249.48 from the security deposit.
- [20] The Landlord shall return \$217.23 of the security deposit and interest to the Tenant forthwith.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$1,249.48 from the security deposit.
- B. The Landlord shall return \$217.23 to the Tenant forthwith.

DATED at Charlottetown, Prince Edward Island, this 4th 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.