

Introduction

- [1] On January 12, 2024, the Landlords 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 pursuant to clause 40.(1) of the *Residential Tenancy Act* (the "Act").
- [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 February 22, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Representative for the Landlords and the Tenant participated in the hearing.

Issue to be Decided

- i. Are the Landlords entitled to retain part of the security deposit?

Summary of the Evidence

- [4] On September 1, 2022, the parties entered into a written fixed-term tenancy agreement for the Residential Property which converted to a month-to-month agreement. Rent was \$2,100.00 due on the first day of the month. A security deposit of \$2,100.00 was required and paid. The Tenant vacated on December 31, 2023.

Landlords' Evidence and Submissions

- [5] The Representative submitted three documents into evidence which included a photograph of a closet door, a photograph of an interior door, and an invoice. The Representative stated \$1,210.87 of the security deposit has been returned. She is requesting to keep \$369.50 as the Tenant did not fill the oil tank as required when she vacated. She is also requesting to keep \$572.13 for a damaged closet door and a damaged interior door which needed to be replaced.
- [6] The Representative stated there is no move-in inspection report but the doors were not broken upon move-in. There was a move-out inspection but she had computer problems and the report is not available. She stated the damages to the doors were not observed until a few days after the move-out inspection was completed when the unit was being prepared for the next tenant. She stated no-one was in the unit between when the Tenant vacated and when maintenance went back in to the unit.

Tenant's Evidence and Submissions

- [7] The Tenant did not submit any evidence prior to the hearing but she did submit a copy of the move-out inspection report to the Officer after the hearing. She agreed that the Landlord could retain \$369.50 of the security deposit for the oil and that part of the security deposit of \$1,210.87 has been returned. She is disputing the Landlord retaining the rest of the security deposit for damages.
- [8] The Tenant stated there was no report completed when she moved in but there was a walkthrough with a property representative. The closet door was off track when she moved in and it was never used. She stated when the move-out inspection was completed no damages to any doors were noted. She stated the closet door was still off track and this is noted in the move-out report. Nothing else in the move-out report states there were any damages and the report states the doors only required paint.

Analysis

Issue i: Are the Landlords entitled to retain part of the security deposit?

- [9] The Landlords are seeking to retain part of the security deposit in the amount of \$369.50 for oil and \$572.13 for repairs. The Tenant agreed the Landlords could retain \$369.50 for the oil charge. Therefore, the Officer is only required to make a determination regarding the \$572.13 claim for repairs.
- [10] The Officer comments that in such matters where there is a claim made against the security deposit, it is the Landlords' 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.*

Tenant responsible for undue damage

28.(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

28.(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.*

- [11] After reviewing the documentary evidence and testimony of the parties, the Officer does not find that the Landlords have provided sufficient evidence to establish that the Tenant has caused, by action or neglect, damage to the rental unit.
- [12] The Landlords did not provide any documentary or witness evidence to establish the condition of the doors when the Tenant moved in. The move-out inspection report does not note any damage to the doors when the Tenant vacated. The Tenant indicated the closet door was off track when she moved in and she did not use the closet door when she lived in the rental unit. The inspection report also notes the closet door was off track when she vacated but it does not state there was any damage to the door.
- [13] The Officer finds the Application is allowed in part and the Landlords may retain \$369.50 of the security deposit and the remainder of the security deposit plus interest shall be returned to the Tenant.

[14] The calculations are as follows:

Item	Amount
Security Deposit	\$2,100.00
Interest (Sept. 1/22 – Mar. 11/24)	\$61.67
Total	\$2,161.67
Less amount for oil	(\$369.50)
Less amount already returned	(\$1,210.87)
To be returned to the Tenant	\$581.30

[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 in part.

[17] The Landlords shall retain part of the security deposit in the amount of \$369.50.

[18] The Landlords shall return the remainder of the security deposit and interest in the amount of \$581.30 to the Tenant on or before March 31, 2024.

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall retain part of the security deposit in the amount of \$369.50.
- B. The Landlords shall return the remainder of the security deposit and interest in the amount of \$581.30 to the Tenant on or before March 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 11th day of March, 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.