

Introduction

- [1] On November 17, 2023, the Landlord 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) and for rent owing pursuant to clause 19.(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 Landlord Representative participated in the hearing however the Tenant did not participate.

Issues to be Decided

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

Summary of the Evidence

- [4] On June 1, 2023, the parties entered into a written fixed-term tenancy agreement for the Residential Property. Rent was \$1,950.00 due on the first day of the month. A security deposit of \$1,950.00 was paid. The Tenant vacated sometime prior to the end of November 2023 pursuant to an eviction notice for unpaid rent.

Landlord's Evidence and Submissions

- [5] The Landlord submitted several pages of documents into evidence including e-transfer notices, a repair invoice, photographs of the Residential Property, and messages between the parties. The Representative stated the Tenant paid the security deposit and first month's rent, but the Tenant failed to pay any rent after that. The Tenant owes five months of rent from July 2023 to November 2023 totaling \$9,750.00. The Landlord submitted messages from the Tenant in which the Tenant stated he thought his spouse was paying the rent and the spouse thought the Tenant was paying.
- [6] After the Tenant vacated the Representative stated several repairs were required to the Residential Property. There were holes in the walls, every door was damaged, painting was required after the repairs had been completed, and there was cleaning required because of animal waste left in the Residential Property. The cost of the repairs totaled \$14,355.65. The Landlord is requesting to retain the security deposit to cover the cost of some of the damages.

Tenant's Evidence and Submissions

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

Analysis

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

- [8] The Landlord is seeking to retain the security deposit as it cost \$14,355.65 to repair and clean the Residential Property after the Tenant vacated. The Officer comments that in such matters where there is a claim made 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.

[9] 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; and

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.

[10] 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 Residential Property and repair invoice submitted by the Landlord, to establish that the Landlord is entitled to retain the Tenant's security deposit plus interest. The Officer finds that the Residential Property was left in a state below ordinary clean and that the damage was beyond normal wear and tear.

[11] The calculations are as follows:

Item	Amount
Security Deposit	\$1,950.00
Interest (June 1/23 – March 11/24)	\$37.09
Total Retained by Landlord	\$1,987.09

[12] 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.

Issue ii: Does the Tenant owe the Landlord rent?

[13] 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] After reviewing the documentary evidence and undisputed testimony of the Representative, the Officer finds that the Landlord has provided sufficient evidence, specifically the testimony of the Representative and the submitted messages between the parties, to establish that the Tenant owes the Landlord \$9,750.00 in outstanding rent for July, August, September, October, and November 2023.

Conclusion

[15] The Application is allowed.

[16] The Landlord shall retain the security deposit and interest in the amount of \$1,987.09.

[17] The Tenant shall pay the Landlord the outstanding rent in the amount of \$9,750.00 on or before March 31, 2024.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the security deposit and interest in the amount of \$1,987.09.
- B. The Tenant shall pay the Landlord the outstanding rent in the amount of \$9,750.00 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.