

Introduction

- [1] On January 2, 2024 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "First Application") with the Residential Tenancy Office (the "Rental Office"). The First Application was filed to seek a finding that rent is owed to the Landlord.
- [2] The Landlord is seeking an order that the Tenant pay **\$2,000.00** in outstanding rent.
- [3] On January 19, 2024 the Landlord filed another *Landlord Application to Determine Dispute* (Form 2(B)) (the "Second Application") with the Rental Office. The Second Application was filed to make a claim against the security deposit pursuant to clause 40(1) of the *Residential Tenancy Act* (the "Act").
- [4] The Landlord is seeking an order that he can retain the security deposit in the amount of **\$500.00** plus interest.
- [5] All documents (including the First and Second Application, the *Notice of Hearing* and the *Evidence Package*) were properly served in accordance with clause 100(1) of the *Act*.
- [6] On February 27, 2024 a teleconference hearing was held at 1:00 p.m. before a Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing themselves. The Tenant 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

- [7] On June 19, 2021 the parties entered into a written, month-to-month tenancy agreement for the Rental Unit. The Rental Unit is situated in a 6-unit apartment building (the "Residential Property"). The Tenant moved into the Rental Unit on July 1, 2021. Rent was \$1,000.00 due on the first day of the month. A security deposit of \$500.00 was paid.

Landlord's Evidence and Submissions

- [8] The Landlord testified that the Tenant vacated the Rental Unit on January 9, 2024. The Landlord testified that the Tenant did not pay rent for December 2023 and January 2024. The Landlord testified that the Tenant abandoned the Rental Unit without notice. The Tenant testified that he is seeking \$1,000.00 for outstanding rent for December 2023 and \$1,000.00 for outstanding rent for January 2024. The Landlord testified that the Tenant was required to give 1-month notice for a month-to-month agreement.
- [9] The Landlord testified that he is seeking to keep the full amount of the security deposit because the Tenant left the Rental Unit in poor condition. The Landlord testified that there was extra cleaning required, damage to the Rental Unit's door and floors and he needed to replace a portable heater.
- [10] The Landlord submitted numerous photographs into evidence and the costs associated with the replacement of the portable heater. The portable heater cost \$259.99 to replace, and the additional costs of cleaning, and repairs to the floor and door were \$275.00.

Tenant's Evidence and Submissions

- [11] The Tenant 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?*

- [12] The First and Second Application are 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.*

- [13] Further, clauses 19(1), 28(3), (4), (5) and 39(2) 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.*

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.*

- [14] 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.
- [15] The Officer concludes that the Landlord has provided sufficient and convincing evidence that the Tenant vacated the Rental Unit without proper notice and in a state below ordinarily clean. The Officer finds that the Landlord has provided sufficient evidence to establish that the Tenant owes outstanding rent for December 2023 and January 2024. The First and Second Application are allowed.

Conclusion

- [16] The First and Second Application are allowed. The Landlord's compensation is calculated as follows:

Item	Amount
Damage & Cleaning Cost	\$534.99
Security Deposit	(\$500.00)
Interest (04/01/23 – 03/12/24)	(\$15.38)
Total Security Deposit Awarded	(\$515.38)
Outstanding rental arrears	\$2,000.00
Total Compensation Awarded to Landlord	\$2,000.00

- [17] 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.

- [18] The interest accrued is calculated to the date this Order is issued.
- [19] The Landlord may retain \$515.38 from the security deposit and interest.
- [20] The Tenant shall pay the Landlord \$2,000.00 for outstanding rent by March 31, 2024.

IT IS THEREFORE ORDERED THAT

- A. The Landlord may retain \$515.38 from the security deposit and interest.
- B. The Tenant shall pay the Landlord \$2,000.00 by March 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 12th 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.