

Background Information

- [1] On December 12, 2023 the Residential Tenancy Office (the “Rental Office”) issued Order LD23-582 ordering the Landlord to return double the security deposit to the Tenant. On December 20, 2023 the Landlord appealed Order LD23-582 to the Island Regulatory and Appeals Commission (the “Commission”).
- [2] On January 24, 2024 the Commission issued Order LR24-01, which stated:

IT IS ORDERED THAT

- 1. The appeal is allowed.***
- 2. Order LD23-582 is reversed.***
- 3. The Landlord has 15 days from the date of this Order to file the correct Form 2(B) Landlord Application to Determine Dispute with the Residential Tenancy Office to make a claim against the security deposit.***

- [3] Rental Office Order LD23-582 and the Commission’s Order LR24-01 are part of the record and are referred to as the “Director’s Exhibit”.

Introduction

- [4] On January 29, 2024 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “Application”) with the Rental Office. The Application was filed to make a claim against the security deposit and interest pursuant to clause 40(1) of the *Residential Tenancy Act* (the “Act”).
- [5] The Landlord is seeking an order to retain the security deposit, in the amount of \$500.00 plus interest.
- [6] On January 30, 2024 the Landlord amended the Application to request an order that the Tenant pay the Landlord additional compensation of \$900.00 due to damage to the Rental Unit.
- [7] All documents (including the Application, *Notice of Hearing* and the *Evidence Package*) were properly served in accordance with clause 100(1) of the *Act*.
- [8] On February 29, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord and the Tenant participated in the hearing.

Issues to be Decided

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

Summary of the Evidence

- [9] On January 7, 2021 the parties entered into a written, month-to-month tenancy agreement for the Rental Unit. The Rental Unit is situated in a 5-unit apartment building (the “Residential Property”). The parties entered into a new written tenancy agreement on January 18, 2023 to add a new roommate to the tenancy. Rent was \$1,275.00 due on the first day of the month. A security deposit of \$600.00 was required and paid.
- [10] At the end of the first tenancy agreement the parties agreed that \$100.00 of the security deposit would be deducted for some work that was required in the Rental Unit. The balance of the security deposit for the new tenancy agreement was \$500.00. The Application is for the \$500.00 balance.

Landlord's Evidence and Submissions

- [11] The Landlord testified that the Tenant had different roommates throughout the tenancy. Before the latest roommate moved into the Rental Unit, the Landlord did work to the room where the former roommate lived. The Landlord testified that after the painting and general repairs were complete, the Tenant moved into that room. The Landlord testified that the Tenant moved into the room on February 1, 2023, when the new roommate moved into the Rental Unit.
- [12] The Landlord testified that the Tenant vacated the Rental Unit on October 31, 2023. The Landlord inspected the Rental Unit, and found damage to the floor and the wall in the Tenant's bedroom. The Landlord testified that he did repairs in that room in January 2023, and that the floor was renovated in January 2021 before the Tenant moved into the Rental Unit. The Landlord testified that on November 5, 2023 he received a quote of \$1,400.00. The Landlord testified that the \$1,400.00 was broken down as \$600.00 to replace the damaged laminate floor in the bedroom, \$400.00 to repair and paint the bedroom walls, and \$400.00 to repair and paint the living room walls.
- [13] The Landlord testified that the full bedroom laminate floor had to be replaced because there was no matching floor to replace just the damaged area. The Landlord testified that cost for painting and the labour required for painting has increased significantly over the past few years. The Landlord testified that the work has been completed in the bedroom and the living room.
- [14] The Landlord submitted into evidence a *Landlord Condition Inspection Report* (Form 5) dated November 2, 2023. The Landlord also submitted photographs of the Rental Unit after the Tenant vacated, showing the condition of the Rental Unit. Some of the photographs were taken during and after the repairs were complete. The Landlord submitted some videos into evidence showing the condition of Rental Unit after the Tenant vacated, and after some of the repairs were complete.

Tenant's Evidence and Submissions

- [15] The Tenant testified that throughout the tenancy she had different roommates living in the Rental Unit. The Tenant disputed the Landlord's claim that he repaired and painted the room in January 2023. The Tenant testified that it was February 2022 that the Landlord did that work. The Tenant submitted a text message conversation between the parties into evidence. The Tenant testified that there is damage in the room, however, two other people lived in that room, before she moved into the room on February 1, 2023.
- [16] The Tenant submitted into evidence a text message conversation between herself and the former roommate who lived in the Rental Unit in 2022. The conversation was regarding the Landlord charging \$200.00 to the former roommate for repainting the bedroom in February 2022. The Tenant testified that she believed the inspection of the Rental Unit happened on October 31, 2023 and not on the date of the Form 5 (November 2, 2023). The Tenant disputed the Landlord's claim that the floor was from 2021. The Tenant described the laminate floor as "very old" in the bedroom. The Tenant testified that the damage to the floor is normal wear and tear, likely from the bedframe. The Tenant submitted that \$400.00 for painting is unreasonable.

Analysis

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

The Second Issue: Is the Landlord entitled to additional compensation?

- [17] The Application is made pursuant 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 Application also seeks additional compensation pursuant to clause 85(1)(d) 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.

85. Powers of the Director

(1) *After hearing an application, the Director may make an order*

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.

[18] Further, clauses 28(4), (5) and 39(2)(a) of the Act states:

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.

[19] 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.

[20] The Officer finds that the Landlord filed the Application with the Rental Office within the 15-day timeline established by the Commission in Order LR24-01 found in the Director's Exhibit.

Undue Damage

[21] The Officer concludes that the Landlord has provided sufficient evidence that the Tenant left the Rental Unit with undue damage to the floors and walls. The Officer finds that the photo and video evidence corroborates the direct testimony from the Landlord, establishing damage to the Rental Unit's walls and bedroom floor beyond normal wear and tear.

- [22] The Officer notes that the Tenant argued that throughout the tenancy, two other roommates lived in the bedroom where the walls and the floor were damaged. The Tenant disputed the Landlord's testimony that the repairs and painting happened in January 2023. The Tenant argued the Landlord did the repairs and painting in February 2022. However, the Officer finds that despite when the repair and painting happened in the bedroom, the evidence establishes that at the end of the tenancy, the bedroom and living room had damage to the floor and walls. The Officer finds that the Tenant has an obligation to leave the Rental Unit undamaged.
- [23] Despite not having any before photographs of the bedroom's condition, the Officer finds that the Landlord, who did the repairs and work, provided direct testimony to the condition of the bedroom prior the tenancy in January 2021 and during the tenancy when repairs were needed and/or required.

Quantification of the Undue Damage

- [24] The Landlord testified that he received a quote of \$1,400.00, which the Landlord testified was the actual cost for completing the repairs, painting and the laminate floor replacement. The Officer notes that the parties disputed the age of the laminate floor for the bedroom. The Officer notes that no direct and objective evidence was presented at the hearing for the Officer to make a finding of the actual age for the laminate floor. However, the Officer notes that the invoice dated November 5, 2023 in the evidence details and states: "damaged laminate flooring needs to be fully replaced which is 150 square foot because there is no match available." Further, the Landlord provided testimony that he bedroom floor was renovated in January 2021 before the Tenant moved into the Rental Unit.
- [25] The Officer concludes that the photo and video evidence of the bedroom floor, and the details of the invoice provide the Officer with enough evidence to conclude, on a balance of probabilities, that the replacement of the laminate floor was required. However, the Officer notes that a laminate floor's life expectancy is generally in the 15-25-year range. The Officer finds that at the very least, the laminate flooring was just under 3 years old before having to be replaced. The Officer notes that the Commission in Order LR24-06 made such comments as it relates to considering depreciation as a result of the principle of betterment:

24. *The Tenants' representative has asked the Commission to account for depreciation in determining the amount to be awarded to the Landlords. The Act does not expressly mention depreciation, however in order to reconcile subsections 28(4) and 28(5), the Commission finds it necessary to look to the common law. The principle of betterment has been applied in similar situations by Canadian courts, with the effect being that depreciation is considered. The basic principle at common law is that a party should not be put in a better position than they would have been had the wrongdoing not occurred.*

- [26] The Officer finds that the facts in LR24-06 are similar as the Commission determined a 10-year old laminate floor which had to be replaced warranted a (10%) ten percent reduction or depreciation of cost. In this case, the Officer finds it appropriate to apply (5%) five percent reduction or depreciation of cost as the laminate floor in this case, and is not nearly as old as the laminate floor in LR24-06, and that the nature of the damages is different in this case.
- [27] Accordingly, the Officer awards the Landlord for damage to the bedroom laminate floor in the amount of \$570.00 (\$600.00 less 5% or \$30.00).
- [28] The Officer finds that the remaining \$800.00 balance for repairing and painting the bedroom walls and living room walls is reasonable. The Officer agrees with the Landlord's position that the cost of labour, supplies and painting has increased in recent years. Further, the Officer finds that the photo and video evidence establishes that the scuffs, marks and general damage to the walls are beyond normal "wear and tear."

- [29] The Officer notes that the Tenant provided evidence of a text message conversation with a former roommate who disclosed that the bedroom was painted by the Landlord in February 2022. The Officer finds that it is not uncommon for landlords to freshly paint their rental unit after each tenancy, and/or every 3 to 5 years when dealing with longer term tenants. The evidence establishes that between February 2022 and October 2023 the walls accumulated a lot of damage, scuffs and marks which would require a fresh paint, and such a period of time is relatively short for what would be expected for painting a rental unit. As a result, the Officer finds that \$800.00 for repairing and painting the bedroom and the living room is reasonable. The Application is allowed and the Landlord is entitled to the remedy sought.

Conclusion

- [30] The Application is allowed. The Landlord shall retain the Tenant's security deposit. The Landlord's additional compensation is calculated as follows:

Item	Amount
Damage & Painting Cost	\$1,370.00
Security Deposit	(\$500.00)
Interest on \$600.00 (01/07/21 – 01/17/23)	(\$2.17)
Interest on \$500.00 (01/18/23 – 03/13/24)	(\$14.16)
Additional Compensation owing to the Landlord	\$853.67

- [31] 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.

- [32] The interest accrued is calculated to the date this Order is issued.
- [33] The Landlord shall retain \$516.33 from the security deposit and interest.
- [34] The Tenant shall pay the Landlord \$853.67 in additional compensation.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the entire security deposit of \$516.33 including interest.
- B. The Tenant shall pay the Landlord \$853.67 on or before March 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 13th 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.