

## Introduction

- [1] On January 13, 2024 the Landlords 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 claim against the security deposit and interest pursuant to clause 40(1) of the *Residential Tenancy Act* (the "Act").
- [2] The Landlords are seeking an order to retain the security deposit, in the amount of \$550.00, plus interest.
- [3] All documents (including the Application, *Notice of Hearing* and the *Evidence Package*) were properly served in accordance with clause 100(1) of the *Act*.
- [4] On February 29, 2024 at 3:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing the Landlords. The Tenant did not appear, and did not have any representation.

## Issue to be Decided

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

## Summary of the Evidence

- [5] In January 2019 the parties entered into a written fixed term tenancy agreement, which converted to a month-to-month agreement. The Rental Unit is situated in an over and under duplex (the "Residential Property"). Rent was \$1,100.00 due on the first day of the month. A security deposit of \$550.00 was required and paid at the start of the tenancy.

### Landlords' Evidence and Submissions

- [6] The Landlord testified that the Tenant vacated on December 31, 2023 due to an *Eviction Notice* (Form 4(A)) served on the Tenant for non-payment of rent. The Landlord submitted a copy of the *Eviction Notice*, for outstanding rent in the amount of \$5,950.00. The Landlord testified that the Tenant has fell behind their rent payments in the past, but generally would get caught up. The Landlord testified that the Tenant fell behind again, but was unable to get caught up. The Landlord testified that she decided to serve the *Eviction Notice* on December 1, 2023.
- [7] The Landlord testified that the Tenant left the Rental Unit in a damaged state; however, is only seeking to retain the security deposit for rent owed. The Landlord testified that the Rental Unit was still vacant as of the date of the hearing. The Tenant is seeking to retain the full amount of the security deposit and interest to cover a portion of the rental arrears.

### Tenant's Evidence and Submissions

- [8] The Tenant did not participate at the hearing, and the Tenant did not submit any written submissions and/or evidence.

## Analysis

[9] 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 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.*

[10] Further, clause 19(1) 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.*

[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 concludes that the Landlords have provided sufficient evidence that the Tenant vacated the Rental Unit with outstanding rental arrears. The Officer finds that the undisputed and direct testimony from the Landlord provides the Officer with sufficient evidence to conclude that the Landlords are entitled to retain the full amount of the security deposit and interest. The Officer notes that the Landlords are only seeking to retain the security deposit and interest, and is not seeking any additional compensation above the security deposit amount. The Application is allowed, and the Landlords are entitled to the remedy sought.

## Conclusion

[13] The Application is allowed. The Landlords shall retain the Tenant's full security deposit and interest.

[14] 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.*

[15] The interest accrued is calculated to the date this Order is issued.

[16] The Landlord shall retain \$578.21 from the security deposit and interest.

[17] **Order LD24-093 will be served to the parties by e-mail.**

**IT IS THEREFORE ORDERED THAT**

- A. The Landlord shall retain \$578.21 from the security deposit and interest.

**DATED** at Charlottetown, Prince Edward Island, this 15th 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.