

Introduction

- [1] On January 15, 2024, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking several remedies pursuant to clause 75 of the *Residential Tenancy Act* (the "Act"):
- a. Rent is owed to the Landlord in the amount of \$1,350.00, pursuant to clause 19.(1) of the *Act*;
 - b. The Tenants owe the Landlord for unpaid utilities in the amount of \$2,310.00, pursuant to clause 19.(1) of the *Act*;
 - c. To make a claim against the \$1,350.00 security deposit, pursuant to clause 40.(1) of the *Act*; and
 - d. Compensation for damages and cleaning in the amount of \$1,960.00 above the security deposit, pursuant to clause 85.(1)(d) of the *Act*.
- [2] All documents (including the Application, the *Notice of Hearing* and the *Evidence Package*) were properly served in accordance with clause 100.(1) of the *Act*.
- [3] On March 5, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord appeared representing himself. The Tenants did not participate in the hearing and did not have representation.

Issues to be Decided

- i. Is the Landlord entitled to rent owing for December 2023 and for unpaid utilities?
- ii. Is the Landlord entitled to retain the security deposit?
- iii. Is the Landlord entitled to compensation above the security deposit?

Summary of the Evidence

- [4] On October 20, 2023, the parties entered into a written, fixed-term tenancy agreement for the Rental Unit. The Rental Unit consists of a single detached house. Rent was \$1,350.00 due on the first day of the month. A security deposit of \$1,350.00 was paid. The Tenants vacated around January 10, 2024.

Landlord's Evidence and Submissions

- [5] The Landlord testified the Tenants failed to pay rent for December 2023. The Landlord served an eviction notice on December 20, 2023, for unpaid rent, and the Tenants vacated around January 10, 2024.
- [6] The Tenants were responsible for paying the Landlord for electricity, propane, and furnace oil, as these utilities were not included in the tenancy agreement. The Landlord submitted an outstanding oil bill into evidence in the amount of \$820.53 and two outstanding electricity bills in the amount of \$76.20 and \$42.43. The tenancy agreement was also submitted into evidence.
- [7] The Landlord stated there are damages to the Rental Unit and painting which is required. The Landlord submitted photographs of the Rental Unit into evidence. The Landlord stated it will cost approximately \$1,960.00 in repairs and painting. After the hearing the Landlord submitted a screenshot from Home Depot showing an estimated cost of \$365.00 to replace the damaged bathroom door.

Tenant's Evidence and Submissions

[8] The Tenant did not submit any evidence and did not participate in the hearing.

Analysis

Issue i: Is the Landlord entitled to rent owing for December 2023 and for unpaid utilities?

[9] The Landlord is seeking to make a claim for rent owing in the amount of \$1,350.00 and unpaid utilities in the amount of \$2,310.00 pursuant to clauses 19.(1) and 60.(6) of the Act. The relevant law is as follows:

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.*

60. Unpaid utilities

(6) *A landlord may treat unpaid utility charges as unpaid rent...*

[10] The Application is made pursuant to section 75 of the Act. In such applications it is the person making the claim that has the burden to prove, on a balance of probabilities, any and all claims made. This means that the party must provide the decision-maker sufficiently clear and convincing evidence to prove their claim(s).

[11] The Officer finds that the Landlord has provided sufficient evidence, specifically the undisputed testimony of the Landlord and the eviction notice, to establish that the Tenants failed to pay rent for December 2023 in the amount of \$1,350.00.

[12] However, the Officer does not find the Landlord has provided sufficient evidence to establish that the Tenants owe \$2,310.00 in unpaid utilities. The Landlord did submit a copy of the tenancy agreement showing that heat, electricity, and propane were the responsibility of the Tenants.

[13] The Landlord submitted an oil invoice into evidence showing an outstanding balance of \$820.53 and two electricity bills into evidence showing an outstanding balance totaling of \$118.43. However, the Landlord has not submitted any other documentary evidence to establish the Tenants owe the Landlord more than this amount for other outstanding utility bills. Therefore, the Officer finds the Landlord has established the Tenants owe the Landlord \$938.96 in unpaid utilities.

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

[14] The Landlord 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.

- [15] As the Officer has already found that the Tenants owe the Landlord \$1,350.00 + \$938.96 (\$2,288.96), the Officer finds that the Landlord is entitled to retain \$1,363.47 of the security deposit plus interest for partial rent and utilities owing.

Issue iii: Is the Landlord entitled to compensation above the security deposit?

- [16] The Landlord is requesting \$1,960.00 in compensation above the security deposit for cleaning and damages pursuant to clause 85.(1)(d) of the Act. The relevant law is as follows:

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.*

- [17] The Officer finds the Landlord has provided sufficient evidence to establish that he is entitled to \$365.00 in compensation for repairing the bathroom door. The Officer notes the Landlord provided photographs of the damaged door as well as an estimate to repair the door.
- [18] The Officer does not find that the Landlord has provided sufficient evidence to establish that he is entitled to the remaining compensation he is requesting. The Landlord has provided photographs of the Rental Unit after the Tenants vacated but did not provide any photographs of what the Rental Unit looked like before the Tenants moved in for the Officer to establish if any of the alleged damages were caused by the Tenants. Furthermore, the Landlord has not provided any other documentary evidence, such as estimates or invoices, to establish the remaining costs he is seeking.

Conclusion

[19] The Application is allowed in part. The Landlord's compensation is calculated as follows:

Item	Amount
Security Deposit	\$1,350.00
Interest (Oct. 20/23 – Mar. 21/24)	\$13.47
Rent Owing for December 2023	(\$1,350.00)
Rent Owing for Utilities	(\$938.96)
Compensation for Damages	(\$365.00)
Total Owed to the Landlord	\$1,290.49

[20] Pursuant to clause 14(9) of the *Act*, the interest accrued is calculated 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.

[21] The Landlord shall retain \$1,363.47 from the security deposit and interest.

[22] The Tenants shall pay the Landlord \$1,290.49 by April 30, 2024.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain \$1,363.47 from the security deposit and interest.

B. The Tenants shall pay the Landlord \$1,290.49 by April 30, 2024.

DATED at Charlottetown, Prince Edward Island, this 21st 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.