

Introduction

- [1] On January 22, 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 seeking several remedies, pursuant to clause 75 of the *Residential Tenancy Act* (the "Act"):
- a. Rent is owed to the Landlords in the amount of \$1,800.00 pursuant to clause 19.(1) of the *Act*;
 - b. The Tenant owes the Landlords for an unpaid oil bill in the amount of \$600.00 pursuant to clause 19.(1) of the *Act*;
 - c. To make a claim against the \$1,800.00 security deposit pursuant to clause 40.(1) of the *Act*;
 - d. Compensation for cleaning and damages in the amount of \$3,170.00 above the security deposit, pursuant to clause 85.(1)(d) of the *Act*.
 - e. To request a determination that the Tenant has sublet without the Landlords' consent contrary to clause 30.(1) 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 February 29, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlords appeared representing themselves. The Tenant did not participate in the hearing and did not have representation.
- [4] The Landlords stated at the beginning of the hearing that their Application also requested the Tenant pay all unpaid utility bills to the city and to permit disposal of the Tenant's personal property, but they were no longer seeking these remedies.

Issues to be Decided

- i. Are the Landlords entitled to rent owing for December 2023 and for unpaid oil?
- ii. Are the Landlords entitled to retain the security deposit?
- iii. Are the Landlords entitled to compensation above the security deposit?
- iv. Did the Tenant sublet without the Landlords' consent?

Summary of the Evidence

- [5] On October 13, 2023, the parties entered into a written, fixed-term tenancy agreement for the Rental Unit, which consists of a single detached house. Rent was \$1,800.00 due on the fifteenth day of the month. A security deposit of \$1,800.00 was paid. The Tenant vacated on January 15, 2024, upon mutual agreement by the parties.

Landlords' Evidence and Submissions

- [6] The Landlords testified the Tenant failed to pay rent for December 2023. The Tenant did try to pay the rent by cheque but it came back as NSF. On January 3, 2024, the Tenant notified the Landlords that he cannot afford the rent and he would vacate the rental unit. The Landlords agreed to end the tenancy when the Tenant vacated and the Tenant vacated on January 15, 2024. Rent for December 2023 was not paid.

- [7] The Landlords testified the Tenant did not re-fill the oil tank upon vacating. When the Tenant moved in the oil tank was 1/3 full and when the Tenant vacated the oil tank was empty. The tenancy agreement required the Tenant to fill the oil tank back to 1/3 full upon vacating. The Landlords submitted a copy of the tenancy agreement into evidence. They stated their oil tank has a capacity of 910 litres.
- [8] The Landlords requested a move out inspection of the Rental Unit with the Tenant but the Tenant stated he was not able to do one. The Tenant vacated on January 15, 2024, and a representative for the Landlords inspected the Rental Unit after that. The Landlords' representative found the Rental Unit was dirty, damaged, and the Tenant had left several items in the Rental Unit. The Landlords' representative took photographs of the Rental Unit and these photographs were entered into evidence.
- [9] The Landlords stated they were required to hire a company to clean and repair the Rental Unit. The Landlords submitted a detailed invoice into evidence showing that it cost \$3,170.00 to clean and repair the Rental Unit and to dispose of the items left behind by the Tenant. The Landlords stated any garbage was disposed of and the rest of the Tenant's items were securely stored.
- [10] The Landlords stated the Landlords' representative found several used mattresses in the Rental Unit after the Tenant vacated. The Landlords stated they were unsure if the mattresses were for the Tenant's animals or if the Tenant sublet without their permission.

Tenant's Evidence and Submissions

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

Analysis

Issue i: Are the Landlords entitled to rent owing for December 2023 and for unpaid oil?

- [12] The Landlords are seeking to make a claim for rent owing in the amount of \$1,800.00 and for unpaid oil in the amount of \$600.00. 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.*

- [13] 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).
- [14] The Officer finds that the Landlords have provided sufficient evidence, specifically the undisputed testimony of the Landlords, to establish that the Tenant failed to pay rent for December 2023 in the amount of **\$1,800.00**.
- [15] The Officer finds that the Landlords have provided sufficient evidence, specifically the undisputed testimony of the Landlords and the submitted copy of the tenancy agreement, to establish that the Tenant was responsible for paying for oil and failed to refill the oil tank to 1/3 full upon vacating.
- [16] The Landlords submitted their oil tank is 910 litres. 1/3 of 910 litres is 303 litres. On the day the Tenant vacated (January 15, 2024) home heating oil was \$1.43 per litre. Therefore, the Officer finds the Tenant owes the Landlords **\$433.29** for the unpaid oil (303 litres x \$1.43 per litre).

Issue ii: Are the Landlords entitled to retain the security deposit?

- [17] The Landlords are seeking to make a claim against the security deposit and interest. 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.*

- [18] The Officer has already found that the Tenant owes the Landlords outstanding rent in the amount of \$2,233.29 (\$1,800.00 + \$433.29), the Officer finds that the Landlords are entitled to retain the security deposit plus interest in the amount of **\$1,819.49** for partial rent owing.

Issue iii: Are the Landlords entitled to compensation above the security deposit?

- [19] The Landlords are requesting \$3,170.00 in compensation above the security deposit for cleaning and damages. 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.*

- [20] The Officer finds that the Landlords have provided sufficient evidence, specifically the undisputed testimony of the Landlords, the photographs of the Rental Unit after the Tenant vacated, and the submitted repair invoice, to establish that the Landlords are entitled to compensation above the security deposit in the amount of **\$3,170.00** for cleaning and repair costs. The Officer finds that the Rental Unit was left in a state below ordinary clean and that the damage left was beyond normal wear and tear.

Issue iv: Did the Tenant sublet without the Landlords' consent?

- [21] The Officer does not find that the Landlords have provided sufficient evidence to establish that the Tenant sublet the Rental Unit without the Landlords' consent. The Officer notes the Landlords assumed the Tenant may have sublet because several mattresses were found in the Rental Unit after the Tenant vacated. However, the Officer does not find that this evidence alone establishes that the Tenant was subletting the Rental Unit.

Conclusion

- [22] The Application is allowed in part. The Landlords' compensation is calculated as follows:

Item	Amount
Damage & Cleaning Cost	\$3,170.00
Rent Owing (Rent and Oil)	\$2,233.29
Less Security Deposit	(\$1,800.00)
Less Interest (Oct. 13/23 – Mar. 27/24)	(\$19.49)
Total Owed by Tenant	\$3,583.80

- [23] 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.

- [24] The Landlords may retain \$1,819.49 from the security deposit and interest.
- [25] The Tenant shall pay the Landlords \$3,583.80 by April 30, 2024.

IT IS THEREFORE ORDERED THAT

- A. The Landlords may retain \$1,819.49 from the security deposit and interest.
- B. The Tenant shall pay the Landlords \$3,583.80 by April 30, 2024.

DATED at Charlottetown, Prince Edward Island, this 27th 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.