

Introduction

- [1] On January 18, 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 amended on February 2, 2024. The Application was filed to make a claim against the security deposit pursuant to clause 40(1) of the *Residential Tenancy Act* (the “Act”).
- [2] The Landlord is seeking an order that she can retain the security deposit in the amount of \$1,500.00. The amendment in the Application includes a finding that the Tenant pay the Landlord \$1,675.50 in compensation above the security deposit amount.
- [3] All documents (including the Application, the *Notice of Hearing* and the *Evidence Package*) were properly served pursuant to clause 100(1) of the *Act*.
- [4] On March 14, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord appeared. The Tenant did not appear, and did not have representation. The hearing was delayed ten minutes, and the Tenant could not be reached. The hearing proceeded in the Tenant’s absence.

Issues to be Decided

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

Summary of the Evidence

- [5] On April 27, 2022 the parties entered into a written fixed-term tenancy agreement for the Rental Unit. The fixed-term was from June 1, 2022 to May 31, 2023. Rent was \$1,500.00 payable on the first day of the month. A security deposit of \$1,500.00 was required and paid.
- [6] Rent was increased by the annual allowable guidelines on January 1, 2024. The Landlord testified that three months’ notice was given to the Tenant and that on January 1, 2024 the rent was increased to \$1,545.00. The Tenant vacated the Rental Unit on January 9, 2024 by Sheriff Services, pursuant a Rental Office Order LD23-615.

Landlord’s Evidence and Submissions

- [7] The Landlord submitted 44-pages of documents into evidence, including: a receipt from Sheriff Services – Charlottetown, a copy of the tenancy agreement, written submissions, additional receipts, and before/after photographs of the Rental Unit.
- [8] The Landlord testified that the total amount of damage to the Rental Unit, and rent outstanding totals \$3,175.50. The Landlord is seeking \$398.71 in outstanding rent for January 1 to January 8, 2024. The Landlord calculates this amount as \$1,545.00 divided by 31 days and multiplied by 8 days.
- [9] The Landlord testified the Rental Unit had a lot of damage to the walls and furniture. Further, the Tenant left a cat behind who was fed by the Landlord’s sister for 13 days before the PEI Humane Society took the cat. Personal items were left behind, which the Landlord stored, and was not picked up until January 31, 2024 by the Tenant, and the remaining personal items were picked up by the Tenant’s parents on February 10, 2024. The Landlord submitted the following breakdown of the damage and the costs associated as follows:

Damage / Replacement costs:

- Damage to chair: \$500.00;
- Damage to sofa: \$600.00;
- Damage to wall: \$200.00;
- Replaced blind: \$50.00;
- Replaced 4 mats: \$50.00;
- Replaced window screen: \$75.00;
- Garbage removal: \$300.00;
- Court/Sherriff Services/locksmith: \$501.79;
- Waste sorting / pick up: \$100.00;
- Storage costs: \$400.00;
- Total costs: \$2,776.79

- [10] The Landlord testified that the furniture was in good condition before the Tenant moved into the Rental Unit. The Landlord testified that no pets were permitted in the Rental Unit.

Tenant's Evidence and Submissions

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

Analysis

- [12] The Application is made pursuant to clause 75 of the Act and is seeking to make a claim against the security deposit, pursuant to clause 40(1) of the Act. Further, the Landlord is seeking additional compensation above the amount of the security deposit. 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.

- [13] Further, subsections 28(3), (4) and (5) of the Act states:

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; and

- (b) *Proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.*

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.*

- [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] After reviewing the evidence and hearing the undisputed testimony from the Landlord, the Officer finds that the Landlord has provided sufficient evidence to retain the security deposit. The Officer comes to this finding based on the photographs showing the condition of the Rental Unit before and after the tenancy. The Officer is satisfied that the evidence demonstrates that the damage to the furniture and the Rental Unit is beyond normal "wear and tear". Further, the Landlord has established the associated costs with the documentary evidence.
- [16] The Landlord is entitled to retain the full amount of the security deposit and interest for 8 days of outstanding rent, and for damage to the Rental Unit, and the costs associated with the eviction and removal/storage of the Tenant's personal belongings. The Application is allowed and the Landlord is entitled to the remedy sought.

Conclusion

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

Item	Amount
Rent Owed & Damage / Costs	\$3,175.50
Security Deposit	(\$1,500.00)
Interest (04/27/22 – 03/27/24)	(\$45.52)
Additional Compensation owing to the Landlord	\$1,629.98

- [18] 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.

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

[20] The Landlord shall retain \$1,545.52 from the security deposit and interest.

[21] The Tenant shall pay the Landlord \$1,629.98 in additional compensation.

[22] **Order LD24-109 will be served to the parties by e-mail.**

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain the entire security deposit of \$1,545.52 including interest.

B. The Tenant shall pay the Landlord \$1,629.98 on or before April 30, 2024.

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