

Introduction

- [1] On December 14, 2023, 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 pursuant to clause 75 of the *Residential Tenancy Act* (the "Act"):

To make a claim against the security deposit; and

Compensation for costs incurred above the security deposit.

- [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 12, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Representatives and the Tenant participated.

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

- [4] In December of 2017, the Tenant and a former landlord entered into a written fixed-term tenancy agreement for the Rental Unit. The Landlord purchased the property in November 2019 and the tenancy agreement continued. Rent was \$1,274.00 due on the first day of the month. A security deposit of \$1,050.00 was paid. The Tenant vacated on December 11, 2023, pursuant to Order LD23-506.

Landlord's Evidence and Submissions

- [5] The Representatives stated the Tenant was required to vacate by December 31, 2023, as a result of Order LD23-506 and the Tenant vacated on December 11, 2023. The Landlord's property manager "A.P." offered to perform a move out inspection with the Tenant but the Tenant did not respond. A.P. attended the Rental Unit on December 12, 2023, and inspected the property. The Representatives stated the Rental Unit was damaged, unclean, and items were missing. The Representatives submitted photographs of the property before and after the tenancy into evidence.
- [6] The Representatives stated A.P. found the sump pump and washing machine were missing. The door lock was missing and the bathroom cabinets were damaged. A toilet and towel rack were broken, blinds were missing, and the Tenant left behind garbage which needed to be disposed of. The Representatives stated one custom blind was missing and another was damaged and they had to purchase six new blinds to get all the blinds to match. The cost to repair and replace these items have cost \$3,413.17 and the Representatives submitted receipts and invoices into evidence for these costs. They stated they were not seeking the cost of a flower purchase for the cleaners listed on an invoice.
- [7] The Representatives stated they anticipate to incur another \$8,380.00 in future work because of damages caused by the Tenant. They stated several walls were written on and they will be required to repaint the interior of the Rental Unit to repair this damage. They estimate it will cost approximately \$2,200.00 plus HST for the painting materials and labour and they will do the work themselves.

- [8] The Representatives stated the Tenant caused damage to the main floor and the floor in an upstairs bedroom. The floors were resurfaced before the Tenant moved in and now it will cost \$5,100.00 plus HST to sand and refinish the floors.
- [9] The Representatives stated the Tenant did not tell A.P. that the Rental Unit was left unsecure when the Tenant vacated. The Tenant removed the lock from the door, which the Representatives agreed the Tenant had paid for and could take. However, the Rental Unit was left unlocked and if the washing machine and sump pump were taken as a result of the Rental Unit being unlocked then this is the fault of the Tenant.

Tenant's Evidence and Submissions

- [10] The Tenant stated he agrees the Representatives can retain the security deposit. He stated he was unable to fully clean the Rental Unit when he vacated and admitted that he and his family did write on the walls. The Tenant stated that neither he nor A.P. followed up with each other for a move out inspection.
- [11] The Tenant stated A.P. was at the Rental Unit when the Tenant was moving out but the Tenant was taking longer than anticipated. A.P. told the Tenant he would come back the next day to inspect the Rental Unit. The Tenant notified A.P. that he was taking the door lock with him and the Rental Unit would not be secure.
- [12] The Tenant denied taking the washing machine and sump pump as he had these items at his new residence and had no need for them. The Tenant submitted a letter into evidence from "T.L." which stated T.L. helped the Tenant move and T.L. did not see the Tenant take the washing machine or sump pump. The Tenant stated if A.P. left the Rental Unit unsecure and someone took the washing machine and sump pump then it was not his responsibility.
- [13] The Tenant stated the shower rod fell and that is how the toilet got damaged. He stated that A.P. glued the toilet back together to repair it. He stated it is not his fault if A.P. is too busy to perform proper repairs.
- [14] The Tenant stated most of the windows had no coverings and the Tenant was required to purchase blinds. He stated the porch and kitchen did have blinds on the windows when he moved in.

Post Hearing Evidence and Submissions

- [15] On March 28, 2024, the Landlord submitted an additional invoice to the Rental Office. The invoice was for refinishing and repairing the floors in the Rental Unit. The amount of the invoice was \$6,256.00 (\$5,440.00 + \$816.00 HST). A copy of the invoice was sent to the Tenant for any submissions he may have and he was requested to respond by April 2, 2024, at 4:00 pm. No response was received by the Tenant.

Analysis

- [16] The Application is made in accordance with 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.*

[17] 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.*

[18] In such matters where there is a claim made against the security deposit or for compensation, it is the landlord's burden to prove, on a balance of probabilities, any and all claims made. 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.

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

[19] The Tenant testified that he agreed the Landlord could retain the security deposit. He stated he was unable to fully clean the Rental Unit upon vacating and that he and his family did write on the walls. The Officer therefore finds that the Landlord is entitled to retain the security deposit plus interest for cleaning and damages.

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

- [20] The Representatives submitted an estimate of \$2,200.00 + HST (\$2,530.00) for painting supplies and labour, as they plan on painting the Rental Unit themselves. The Officer finds that the Landlords have established that an estimate of \$2,530.00 for painting supplies and labour to be reasonable, based on the evidence presented, specifically the testimony of the Representatives, photographs of the damaged walls, and the acknowledgement by the Tenant that he and his family wrote on the walls.
- [21] The Officer finds that the Landlord has provided sufficient evidence, specifically the testimony of the parties, the photographs of the Rental Unit, and the submitted invoices, to establish that the Landlord is entitled to part of the requested cleaning and repair costs in the amount of \$1,704.61. The Officer finds that the Rental Unit was left in a state below ordinary clean and that some of the damages incurred were beyond normal wear and tear. The breakdown of the allowed costs are as follows:

<u>Item</u>	<u>Cost</u>
Check house and photos	\$17.00
2 Doorknob sets	\$76.48
Change door knobs	\$17.00
Cleaning supplies	\$86.59
Sort and bag garbage	\$170.00
Dump fees	\$231.16
Labour to haul garbage	\$161.50
11 hours 2 people cleaning	\$374.00
Repair of bathroom cabinets	\$136.85
Replacement of towel rack	\$61.97
Replacement of broken toilet	\$173.06
Replacement of 2 blinds	\$199.00
Painting	\$2,530.00
Total	\$4,234.61

- [22] The Officer does not find the Landlord has established the Tenant is responsible for:

<u>Item</u>	<u>Cost</u>
Washing machine	\$557.75
Sump pump hookups	\$119.76
Purchase and hookup sub pump	\$17.00
Fix barn doors	\$17.00
Replacement of 4 blinds	\$497.00
Flower arrangements for cleaners	\$25.90
Floors	\$6,256.00

Sump Pump and Washing Machine

- [23] The Officer does not find that the Landlord has provided sufficient evidence to establish that the Tenant is responsible for the cost of the sump pump or the washing machine. The Tenant denied taking the items and also submitted a letter from T.L. stating he did not observe the Tenant remove the washing machine or sump pump when vacating.

- [24] Furthermore, the Tenant stated he notified A.P. that the Rental Unit would be left unsecure after the Tenant had vacated and the Representatives stated that A.P. did not check on the Rental Unit until the day after the Tenant had vacated. Based on the evidence presented, the Officer does not find the Landlord has established the Tenant is responsible for compensating the Landlords for the missing items. The Officer notes that testimony at the hearing from A.P. would have been of assistance for the determination of this matter.

Barn Doors

- [25] The Officer does not find that the Landlord has established the Tenant is responsible for the repair of the barn doors. The Representatives have not provided any evidence establishing the doors were damaged by the Tenant or what the condition of the doors were when the Tenant moved in.

Blinds

- [26] The Officer does not find that the Landlord has established the Tenant is responsible for the cost of all six of the custom blinds. The Officer finds the Representatives have established the Tenant had damaged or removed two of the blinds and is responsible for these costs. However, the Officer does not find the Tenant is responsible for ensuring the Landlord has matching blinds in the Rental Unit. The Tenant is only responsible for the items that were damaged and is not responsible for cosmetic choices of the Landlord.

Flowers

- [27] The Officer notes the Representatives testified during hearing that they are not seeking the cost of the flowers they provided to the cleaners. Therefore, the Officer finds the Tenant is not responsible for this cost.

Floors

- [28] The Officer does not find the Landlords has established the Tenant is responsible for the cost of the floor repairs. The Tenant had lived in the Rental Unit from December 2017 to December 2023 and during that time frame, normal wear and tear would be expected to occur on a hard wood floor. The Officer notes there were no photographs submitted into evidence showing the condition of the living room floor or the bedroom floor prior to the Tenant moving in for comparison purposes. The Officer also notes the before and after photographs of the dining room are not clear and do not sufficiently depict any damage beyond wear and tear. Therefore, the Officer is unable to award the Landlord the requested compensation.

Conclusion

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

Item	Amount
Repairs	\$4,234.61
Less Security Deposit	(\$1,050.00)
Less Interest (Dec. 1/2017 – Apr. 4/2024)	(\$70.02)
Total Owed by Tenant	\$3,114.59

- [30] 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.

- [31] The Landlord may retain \$1,120.02 from the security deposit and interest.
- [32] The Tenant shall pay the Landlord \$3,114.59 by May 30, 2024.
- [33] This Order will be sent to the parties by email.

IT IS THEREFORE ORDERED THAT

- A. The Landlord may retain \$1,120.02 from the security deposit and interest.
- B. The Tenant shall pay the Landlord \$3,114.59 by May 30, 2024.

DATED at Charlottetown, Prince Edward Island, this 4th day of April, 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.