

Introduction

- [1] On February 12, 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 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 he can retain the full amount of the security deposit in the amount of \$650.00.
- [3] 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*.
- [4] On March 19, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord and the Tenant participated at the hearing.

Issue to be Decided

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

Summary of the Evidence

- [5] In September 2022 the parties entered into a written month-to-month tenancy agreement. The Rental Unit is a room situated in a 5-unit apartment building. The tenancy is a sub-tenancy agreement. Rent was \$650.00 payable on the first day of the month. A security deposit of \$650.00 was paid on August 11, 2022. The Tenant vacated the Rental Unit on January 31, 2024.

Landlord’s Evidence and Submissions

- [6] The Landlord submitted 69-pages of documents into evidence including: proof of service, photographs of the Rental Unit, receipts, invoices and a cost breakdown of the damages and rent arrears owed.
- [7] The Landlord testified that he is only seeking the full amount of the security deposit and interest to cover the outstanding rent owed for February 2024. The Landlord submitted that the Tenant provided insufficient notice. The Landlord testified that he received a text message from the Tenant on or around January 18, 2024, that she was vacating the Rental Unit at the end of the month. The Landlord submitted that the Tenant was required to give 1-months’ notice before vacating.
- [8] The Landlord testified that there was undue damage to the Rental Unit, beyond normal wear and tear. The Landlord submitted photographs, which the Landlord testified he took the photographs of the Rental Unit on February 1 and 2, 2024. The Landlord submitted invoices and receipts in a total amount of \$1,079.00. The Landlord testified that painting was required after removing lighting strips from the Rental Unit, and a lot of cleaning was required. However, the Landlord submitted he was not seeking any additional compensation above the security deposit.

Tenant’s Evidence and Submissions

- [9] The Tenant submitted 12-pages of documents into evidence including: written submissions, text messages between the parties.
- [10] The Tenant testified that she asked the Landlord to return her security deposit. The Tenant disputed the Landlord’s testimony about the condition of the Rental Unit. The Tenant testified that she removed all her personal items from the Rental Unit, any food left was in the common area fridge, and her roommate was holding onto her remaining food for a period of time.

- [11] The Tenant admitted that she vacated the Rental Unit without removing the lighting strips. The Tenant believed the next tenant would likely want to keep them as the room is generally rented to international students.

Analysis

- [12] 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. Clause 40(1) of the Act states:

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.*

- [13] Further, clauses 28(3), (4), (5) and 55(2) 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.*

55. Notice for monthly or other periodic tenancy

- (2) *A tenant may end a month-to-month or other periodic tenancy by giving the landlord a notice of termination effective on a date that*
- (a) *is not earlier than one month after the date the landlord receives the notice; and;*
 - (b) *is the day before the day that rent is payable under the tenancy agreement.*

- [14] The Landlord initiated the Application as required under the *Act*. The Landlord bears the onus of proving his claim(s) on a balance of probabilities. The courts have interpreted this standard to mean that a decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim(s) and the value of the alleged damages.

February 2024 rent in the amount of \$650.00

- [15] The Officer finds that the undisputed evidence establishes that the parties were under a month-to-month tenancy agreement. Clause 55(2) of the *Act* requires a tenant to give a landlord notice that is not earlier than one month, and is the day before the day that rent is payable under the tenancy agreement. In this case, the documentary evidence establishes that the Tenant sent a text message to the Landlord on or around January 18, 2024 providing notice that she would be vacating the Rental Unit at the end of January 2024. The Officer finds that for the Tenant to be in compliance with clause 55(2) she would have had to provide the Landlord with a *Tenant Notice of Termination (Form 3)* on or before December 31, 2023, as rent is due on the first day of the month.
- [16] The Tenant giving the Landlord notice on or around January 18, 2024 would not have effectively terminated the tenancy agreement until February 29, 2024. Therefore, the Officer concludes that the Tenant did not comply with clause 55(2) of the *Act* and the Landlord has established a valid claim for retaining the security deposit for outstanding rent for February 2024. This claim is allowed.

Undue Damage and Cleaning in the amount of \$1,079.00

- [17] The Officer notes that the Landlord is not seeking any additional compensation above the security deposit amount. As the Officer has already found that the Landlord is entitled to retain the full amount of the security deposit for outstanding rent arrears, all that remains is the accrued interest on the security deposit.
- [18] The Officer finds that the Landlord provided direct testimony, corroborated by photographs of the Rental Unit at the end of the tenancy. This evidence establishes that the Tenant left the Rental Unit in a condition below ordinarily clean as outlined in clause 28(3) of the *Act*. Further, the Officer finds that the Landlord submitted invoices and receipts, along with oral testimony to establish the value of the costs associated with the breach of the *Act*. The Officer finds that the Landlord is entitled to retain the accumulated interest in the amount of \$20.21.

Conclusion

- [19] The Application is allowed. The Landlord shall retain the full amount of the security deposit and accrued interest in the amount of \$670.21.
- [20] 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.

- [21] The interest accrued is calculated to the date this Order is issued.
- [22] **Order LD24-118 will be served to the parties by e-mail.**

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain \$670.21 from the security deposit and interest.

DATED at Charlottetown, Prince Edward Island, this 8th day of April, 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.