

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 part of the security deposit in the amount of \$506.25.
- [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 19, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord and Tenant both participated.

Issue to be Decided

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

Summary of the Evidence

- [5] In December 2022, the parties entered into a verbal month-to-month tenancy agreement for the Rental Unit. Rent was \$900.00 payable on the first day of the month. A security deposit of \$1,000.00 was required and paid. \$493.75 of the security deposit has been returned to the Tenant. The Tenant vacated on January 31, 2024.

Landlord’s Evidence and Submissions

- [6] The Landlord testified that he is seeking to retain \$506.25 of the security deposit for damages and cleaning. He is seeking \$316.25 of the security deposit because the Tenant damaged one of the washing machines used by the tenants in the building. He stated the Tenant overloaded the washing machine with his comforters causing damage to the washing machine’s drum. It cost the Landlord \$316.25 to repair the drum and the washing machine was only four or five years old. Photographs of the washing machine were submitted into evidence as well as a repair invoice.
- [7] The Landlord submitted into evidence a written statement from “J.M.” dated February 11, 2024. J.M. stated he was the Tenant’s neighbor and could hear banging coming from the laundry room. He went into the laundry room and observed the washing machine on the other side of the room and it was bouncing. J.M. opened the washing machine and observed a “massive quilt” wrapped around the spinner and the spinner was cracked. The Tenant advised J.M. the quilt belonged to the Tenant.
- [8] The Landlord stated the Tenant also damaged the coin mechanism of the washing machine, allowing the machine to be used for free. He stated he assumed it was the Tenant who had damaged the coin mechanism as the Tenant had been observed in the laundry room with the door closed. The Landlord stated it cost \$115.00 to repair the coin mechanism and an invoice of the repair and photographs of the washing machine were submitted into evidence.
- [9] The Landlord stated it cost \$75.00 for two hours of work to clean the stove in the Rental Unit after the Tenant vacated. The Landlord stated the stove was only 4.5 years old and it was very dirty inside and outside. The Landlord submitted photos of the stove into evidence as well as a cleaning invoice. The Landlord submitted a statement from “S.C.” who stated she lived in the Rental Unit before the Tenant. S.C. stated she spent over an hour cleaning the interior of the stove before vacating.

Tenant's Evidence and Submissions

- [10] The Tenant stated he only washed a queen size comforter in the washing machine on two occasions. On the day J.M. found his comforter in the washing machine there had already been a pool of water outside of the washing machine before he used it. The Tenant stated J.M. notified him the washing machine had been jumping all over and it might be broken. He denied that it was his comforter which damaged the washing machine. The Tenant also denied damaging the coin mechanism on the washing machine.
- [11] The Tenant stated the stove required cleaning when he moved in and he notified the Landlord. Someone did attend to clean the stove but they only wiped it and did not clean it. He stated he did pay someone to clean the Rental Unit before he vacated and there was no move out inspection to let the Tenant know about the stove. The Tenant stated \$75.00 is too high of a cost to clean the stove.

Analysis**Is the Landlord entitled to retain part of the security deposit?**

- [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*. 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 and convincing evidence to support the claim(s) made against the security deposit.
- [13] 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.*

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.*

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.*

Damage in the amount of \$316.25

- [14] The Officer finds that the Landlord provided direct testimony, corroborated by photographs of the damaged washing machine and a written statement submitted by J.M., to establish that the damage to the interior of the washing machine was caused by the Tenant. The Officer notes that although the Tenant denied causing the damage and J.M. did not provide direct evidence at the hearing, the Tenant's testimony corroborated parts of J.M.'s statement. The Tenant testified J.M. notified the Tenant the washing machine was moving around and the Tenant also testified that it was the Tenant's comforter in the washing machine at that time. J.M.'s statement noted J.M. observed the spinner was cracked with the comforter around it.
- [15] Further, the Officer finds that the Landlord submitted an invoice to establish the value of the cost associated with the repair. As the Landlord testified the washing machine was only four or five years old, the Officer does not find the damage would be considered "normal wear and tear." The Officer finds that the Landlord is entitled to retain part of the security deposit in the amount of \$316.25.

Cleaning in the amount of \$75.00

- [16] The Officer finds that the Landlord provided direct testimony, corroborated by photographs of the stove and a written statement submitted by S.C., to establish that the stove was left in a condition beyond ordinarily clean when the Tenant vacated.
- [17] The Officer notes that although the Tenant stated the stove was unclean when he moved in, the statement submitted by S.C. stated that S.C. had cleaned the stove before she vacated, prior to the tenant moving in. Furthermore, as the Tenant had lived in the Rental Unit for approximately one year, the Tenant had sufficient time to request the stove be cleaned by the Landlord, if he felt it had not been properly cleaned when he moved in.
- [18] Further, the Officer finds that the Landlord submitted an invoice to establish the value of the cost associated with the cleaning. The Officer is satisfied that the evidence demonstrates that the stove was left in a condition beyond ordinarily clean when the Tenant vacated. The Officer finds that the Landlord is entitled to retain part of the security deposit in the amount of \$75.00

Damage in the amount of \$115.00

- [19] The Landlord stated he assumed the Tenant had damaged the coin mechanism as the Tenant was observed in the laundry room with the door closed. However, the Landlord has not provided any evidence, such as photographic or witness evidence, to establish that the Tenant was the cause of the damage to the coin mechanism. Furthermore, the Tenant denied causing the damage to the coin mechanism. This part of the claim is denied.

[20] The Application is allowed in part. The calculations are as follows:

Item	Amount
Security Deposit – Dec. 1/22 – Jan. 31/24	\$1,000.00
Interest – Dec. 1/22 – Jan. 31/24	26.91
Less Security Deposit Returned	(\$493.75)
Interest on remaining deposit: Feb. 1/24 – Apr. 9/24	\$2.23
Remaining deposit and interest held by Landlord	\$535.39
Less Damage and Cleaning	(\$391.25)
Total to be returned to Tenant	\$144.14

Conclusion

[21] The Application is allowed in part.

[22] The Landlord shall retain \$391.25 of the Tenant's security deposit plus interest.

[23] The Landlord shall return \$144.14 to the Tenant by April 30, 2024.

[24] 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.

[25] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain \$391.25 of the Tenant's security deposit and interest.

B. The Landlord shall return \$144.14 to the Tenant by April 30, 2024.

DATED at Charlottetown, Prince Edward Island, this 9th 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.