

Introduction

- [1] On January 3, 2024 the Landlord representative (the “Representative”) filed a *Landlord Application to Determine Dispute (Form 2(B))* (the “First Application”) with the Residential Tenancy Office (the “Rental Office”). On February 5, 2024, the Representative amended the First Application. The Representative filed the First Application to make a claim against the security deposit pursuant to clause 40(1) of the *Residential Tenancy Act* (the “Act”). The Landlord is also seeking an order of payment for outstanding rent in the amount of \$3,050.00.
- [2] On February 28, 2024 the Representative filed another *Landlord Application to Determine Dispute (Form 2(B))* dated February 27, 2024 (the “Second Application”). The Representative filed the Second Application seeking additional compensation above the security deposit amount. The Landlord is seeking \$8,446.23 in compensation.
- [3] All documents (including the First Application, Second Application, the *Notice of Hearing* and the *Evidence Package*) were properly served in accordance to clause 100(1) of the *Act*.
- [4] On March 26, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord appeared, and the Representative appeared at the hearing. The Tenant did not appear. The hearing was delayed (10) ten minutes and the Rental Office contacted the Tenant without success. 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 October 7, 2021 the parties entered into a written, fixed-term tenancy agreement. The fixed-term was from October 10, 2021 to October 9, 2022, which then converted to a month-to-month agreement. Rent was \$2,100.00 payable on the 10th day of the month. A security deposit of \$2,100.00 was required and paid on October 7, 2021.
- [6] Part of the *Evidence Package* includes Rental Office Order LD23-556 dated November 29, 2023 included by the Director of Residential Tenancy (the “Director Exhibit”).

Landlord’s Evidence and Submissions

- [7] The Landlord submitted 40-pages of documents into evidence including: written submissions, proof of service, photographs of the Rental Unit at the end of the tenancy, an e-mail from JATT Drywall and Painting, an e-mail from the Landlord’s cleaner, and invoices.
- [8] The Representative testified that in Order LD23-556 the Tenant was ordered to vacate the Rental Unit by January 31, 2024. However, the Tenant vacated on January 22, 2024.
- [9] The Representative testified that the Tenant vacated with rent owing. The Representative submitted that the Tenant owed \$3,050.00 in arrears.
 - \$2,100.00 owed from December 10, 2023 – January 9, 2024; and
 - \$950.00 owed from January 10, 2024 – January 22, 2024.
- [10] The Representative testified that the Tenant left the Rental Unit with significant damage, and unclean. The Representative submitted that JATT Drywall and Painting was hired to inspect and complete renovations for the Rental Unit.

- [11] The Representative testified that a lot of garbage was removed from the Rental Unit, numerous holes were fixed in the walls, the entire Rental Unit required a new paint job, (6) six wall heaters were required to be fixed and (2) two were replaced. The total cost was \$8,884.26. The Representative testified that it took three weeks to complete the renovations. The Representative submitted photographs taken by the Representative on January 23, 2024, and a written submission from the professional hired to do the renovations to corroborate the work required.
- [12] The Representative testified that the Rental Unit is a new residential property, and that the Tenant is the first occupant to live in the Rental Unit. The Representative argued that the damage caused is not normal wear and tear.
- [13] The Representative testified that a deep cleaning was required for the Rental Unit and cost \$1,300.00. The Representative submitted the invoice and a written submission from the cleaner. The Representative testified that the cost was actually \$3,400.00, however, was able to negotiate a lower cost. The Representative testified that there were additional costs such as:
- \$200.00 to replace a window screen;
 - \$26.27 to replace a heat pump remote; and
 - \$135.70 to replace a control for an air exchanger.
- [14] The Representative testified that the total damage cost is \$10,546.23. The Representative is making a claim against the full amount of the security deposit and interest to put towards this damage. The Representative argued that after deducting the security deposit the Tenant owes \$11,496.23 for damages and rent owed.

Tenant's Evidence and Submissions

- [15] The Tenant did not submit any documents or written submissions into evidence. The Tenant did not participate at the hearing to provide oral testimony and/or submissions as it relates to the First Application and the Second Application.

Analysis

- [16] The First Application and the Second Application are made in accordance with clause 75 of the *Act* and are seeking to make a claim against the security deposit, pursuant to clause 40(1) of the *Act*. 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, clauses 28(3), (4), and (5) of the *Act* state:

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] The Landlord initiated the First Application and the Second Application as required under the *Act*. The Landlord bears the onus of proving his claim 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 damage.

Outstanding rent in the amount of \$3,050.00

[19] The Officer finds that the undisputed testimony, documentary evidence, including the Director's Exhibit, establishes that the Tenant was responsible for rent until she was ordered to vacate on January 31, 2024. The undisputed testimony of the Representative, corroborated by a text message conversation between the parties, establish that the Tenant vacated the Rental Unit on January 22, 2024. The Officer finds that the Landlord did not submit a rent ledger into evidence, however, in the text message conversations between the parties submitted into evidence, the Officer finds that the Landlord requested rent be paid on January 22, 2024. The Officer concludes that the Landlord is entitled to a finding that rent be paid in the amount of \$3,050.00 (\$2,100.00 + \$950.00). This claim is allowed.

Damage, cleaning & replacement of items in the amount of \$10,546.23

[20] The Officer notes that the Landlord did not provide time stamped photographs of the Rental Unit at the beginning of the tenancy. However, the Officer finds that the undisputed evidence is that the Rental Unit is a new residential property, and that the Tenant was the first occupant to live in the Rental Unit.

[21] The Officer finds that the Landlord has provided convincing evidence to establish that the Tenant caused undue damage to the Rental Unit, and left the Rental Unit in an unclean condition. The Officer finds that the undisputed testimony from the Representative, corroborated by the photos taken on January 23, 2024, the written submissions by the professional hired to renovate and the cleaner, establish that the Tenant caused undue damage to the Rental Unit beyond normal wear and tear. Further, the Officer finds that the photographs establish that the Rental Unit was left in a condition below ordinarily clean.

- [22] The Officer finds that the Landlord has provided sufficient evidence to establish that the Rental Unit's window screen needed to be replaced, and that a heat pump and air exchanger remote needed to be replaced.
- [23] The Officer finds that the Landlord has submitted invoices and receipts into evidence to establish the value of the damage caused by the Tenant. The Officer finds that the Landlord is entitled to \$3,050.00 in rent owed and \$10,546.23 in additional compensation for a total of \$13,596.23. The Landlord has established a valid claim to retain the security deposit and interest to cover the Tenant's liability.
- [24] The accrued interest on the \$2,100.00 security deposit is \$66.91.
- [25] In accordance 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.

- [26] The interest accrued is calculated to the date this Order is issued.
- [27] The calculations are as followed:

Item	Amount
Rent Arrears & Damage / Cleaning Liability	\$13,596.23
Security Deposit & Interest	(\$2,166.91)
Total Amount Awarded to Landlord	\$11,429.32

Conclusion

- [28] The First Application and the Second Application are allowed. The Landlord shall retain the full amount of the security deposit and interest in the amount of \$2,166.91.
- [29] The Tenant shall pay the Landlord \$11,429.32 on or before May 31, 2024.
- [30] **This Order will be served to the parties by e-mail.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$2,166.91 from the security deposit and interest.
- B. The Tenant shall pay the Landlord \$11,429.32 on or before May 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 11th 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.