

Introduction

- [1] On February 23, 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”) and to seek compensation above the security deposit.
- [2] The Landlord is seeking an order to retain the security deposit and to compensation above the security deposit, totaling \$2,116.00.
- [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 27, 2024, at 1:00 p.m., a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). A Landlord Representative called into the hearing, however the Tenants did not call in. The Officer called the Tenants at 1:05 p.m., but neither phone number was in service. The Officer sent both Tenants an email, however no response was received from the Tenants. The hearing proceeded in the Tenants’ absence and the Tenants did not call into the hearing at any time.

Issues to be Decided

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

Summary of the Evidence

- [5] On September 26, 2023, the parties entered into a written month-to-month tenancy agreement for the Rental Unit. Rent was \$950.00 payable on the first day of the month. A security deposit of \$950.00 was required and paid. The Tenants vacated on January 16, 2024, pursuant to an eviction notice (the “Notice”) for non-payment of rent.

Landlord’s Evidence and Submissions

- [6] The Representative testified the Tenants were served the Notice on December 4, 2023, effective December 24, 2023, for non-payment of rent in the amount of \$950.00 for December 2023. The Tenants were still in the Rental Unit on January 15, 2024, and a 24-hour inspection notice was posted on the door on that date. When the Landlord attended the Rental Unit on January 16, 2024, they found the Tenants had vacated. The Representative stated the Landlord was no longer seeking compensation for cleaning and damages, which had been requested on the Application.
- [7] The Representative testified the Tenants owe \$550.00 in partial rent for November 2023, \$950.00 in full rent for December 2023, and \$491.00 in partial rent for the 16 days in January 2024 the Tenants remained in the Rental Unit. The Landlord is also seeking \$125.00 as the Tenants provided the Landlord with five cheques for rent which came back as NSF (non-sufficient funds) from the Landlord’s bank, which cost the Landlord \$25.00 per cheque. The total the Landlord is seeking is \$2,116.00, which is the \$950.00 security deposit and compensation in the amount of \$1,166.00 above the security deposit.
- [8] The Landlord submitted a rental ledger into evidence showing the outstanding rent owing and the NSF charges which had been incurred. The Landlord also submitted a copy of the Notice for non-payment of rent in the amount of \$950.00 for December 2023.

Tenants' Evidence and Submissions

[9] The Tenants did not submit any evidence and they did not participate in the hearing.

Analysis

Is the Landlord entitled to retain the security deposit and to compensation?

[10] 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 and to compensation above the security deposit. In such matters where there is a claim made against the security deposit and 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 and convincing evidence to support the claim(s) made.

[11] The relevant law is as follows:

19. Tenant shall pay rent when due

(1) *A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.*

20. Fees charged by landlord

(2) *A landlord may charge a fee for*
(d) an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution.

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.

Rent owing in the amount of \$1,991.00

- [12] The Representative testified the Tenants owe partial rent in the amount of \$550.00 for November 2023, full rent in the amount of \$950.00 for December 2023, and partial rent in the amount of \$491.00 for January 2024, totaling \$1,991.00. The Officer finds that the Representative provided undisputed testimony, corroborated by a rental ledger showing the outstanding rent, as well as an eviction notice for December 2023, to establish the Tenants did not pay rent when it was due under the tenancy agreement, totaling **\$1,990.40**, as outlined in clause 19.(1) of the Act. The Officer calculates the rent owing differently for January 2024 as:

\$950.00 / 31 days	\$30.65 per day
\$30.65 per day x 16 days	\$490.40 for January 2024

NSF fees in the amount of \$125.00

- [13] The Representative testified the Tenants owe \$125.00 in NSF fees, as five rent cheques were returned by the Landlord's bank for insufficient funds in the Tenants' bank account. The Officer finds that the Representative provided undisputed testimony, corroborated by a rental ledger showing the NSF fees, to establish the Landlord is entitled to administration fees of not more than \$25 per cheque, for the return of a tenant's cheque by a financial institution, totaling \$125.00, as outlined in clause 20.(2) of the Act.
- [14] The Officer therefore finds the Landlord is entitled to retain the security deposit plus interest and to compensation above the security deposit for the rent owing and outstanding NSF fees. The calculations are as follows:

Item	Amount
Rent Owing (\$1,990.40) and NSF fees (\$125.00)	\$2,115.40
Security Deposit	(\$950.00)
Interest - Sept. 26/23 – Apr. 10/24	(\$12.27)
Total owed by the Tenants	\$1,153.13

- [15] 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.

Conclusion

- [16] The Application is allowed.
- [17] The Landlord shall retain \$962.27 of the Tenants' security deposit plus interest.
- [18] The Tenants shall pay the Landlord \$1,153.13 by May 1, 2024.
- [19] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$962.27 of the Tenants' security deposit plus interest.
- B. The Tenants shall pay the Landlord \$1,153.13 by May 1, 2024.

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