Introduction

[1] On February 14, 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 claim against the security deposit.

[2] On February 14, 2024 the Landlord electronically served the Application.

[3] On February 22, 2024 the Rental Office mailed and electronically provided the parties with the *Notice of Hearing*.

[4] On March 15, 2024 the *Evidence Package* was electronically sent to the parties. The *Evidence Package* totals 37-pages of documents.

[5] 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*.

[6] On April 4, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Landlord and the Tenants participated at the hearing.

Issue to be Decided

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

Summary of the Evidence

[7] On December 21, 2022 the parties entered into a written, fixed-term tenancy agreement for the period of January 1, 2023 to December 31, 2023. Rent was $2,750.00 due on the first day of the month. A security deposit of $2,750.00 was paid at the beginning of the tenancy. The Tenants vacated the Rental Unit on February 1, 2024.

Landlord's Evidence and Submissions

[8] The Landlord submitted 31-pages of documents into evidence including: Island Petroleum Statement, text messages between the parties, the tenancy agreement, a Statement of Responsibilities signed by the Tenant, and photographs of the Rental Unit.

[9] The Landlord testified that the Tenants agreed that the Landlord could keep $1,350.00 for rent owing from Januarys 15 – 31, 2024. The Landlord testified that the Tenants agreed that the Landlord could keep $550.00 for the purchase of a table.

[10] The Landlord testified that the Tenants gave notice by text message on January 15, 2024 that they were vacating because they could no longer afford the Rental Unit. The Landlord submitted the text messages between the parties discussing rent and the purchase of the table (page 10 of *Evidence Package).*

[11] The Landlord testified that the Tenants owe $200.00 for topping up the refill of the oil tank. The Landlord stated that this is the Tenants' responsibility in the tenancy agreement.

[12] The Landlord testified that she inspected the Rental Unit on February 1, 2024. The Landlord testified that there was minor damage such as damage to the exterior door lock, scratches and scuffs on the walls, and other minor damages at a total cost of $140.00. The Landlord submitted photographs taken on February 1, 2024, however, did not submit any invoices or receipts for the alleged damages.

[13] The Landlord testified that the Rental Unit was left unclean and it cost $200.00 to deep clean the Rental Unit. The Landlord testified that it looked like only the floors were cleaned. The walls, floors under the appliances, and the appliances themselves were dirty.

[14] The Landlord testified that she is willing to return $310.00 from the security deposit if the Tenants remove their pool from the backyard, and fix the damage to the lawn before end of April 2024. Further, the Landlord wanted the Tenants to return the garage door remote and mail box key and remove garbage from the Rental Unit.

Tenants' Evidence and Submissions

[15] The Tenants did not submit any documents into evidence. However, the Tenants did respond to the Landlord's evidence and testimony, and provided their own oral submissions at the hearing.

[16] The Tenants did not dispute the Landlord's testimony regarding the agreement between the parties for outstanding rent in the amount of $1,350.00, and the purchase of the Landlord's table for $550.00.

[17] The Tenants testified that they disputed owing $200.00 for refilling the oil tank. The Tenants testified that the tenancy agreement does not require the Tenants to refill the oil tank at the end of the tenancy.

[18] The Tenants disputed the minor damage allegations from the Landlord. The Tenants testified that they would have filled any cracks in the walls, but were not going to paint the entire Rental Unit. The Tenants argued painting is common after every tenancy. The Tenants testified that they do not recall causing damage to the wood trim on the door. The Tenants testified that the Landlord's maintenance person may have done that after moving some items from the Rental Unit. The Tenants denied causing any damage to the back door of the Rental Unit, and argued it was always broken.

[19] The Tenants admitted to having the mailbox key and testified that they forgot to return it to the Landlord.

[20] The Tenants testified that they cleaned the Rental Unit and questioned the Landlord's expense for cleaning.

[21] The Tenants testified that the pool has already been removed from the Rental Unit's backyard. The Tenant testified that he intends to return to the Rental Unit once the weather warms and he will fix the lawn and remove any garbage as the Landlord requested.

Analysis

[22] The Application is made in accordance with clause 75 of the *Residential Tenancy Act* (the "*Act*") and is seeking to make a claim against the security deposit, pursuant to clause 40(1) of the *Act*. 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.*

[23] Further, clauses 1(q), 28(3), (4) and (5) of the *Act* states:

> ***1. Definitions***
> *In this Act,*
> *(q) "**security deposit**" means money or any property paid by or on behalf of a tenant to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant respecting the rental unit.*
>
> ***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*

[24] The Landlord initiated the Application under the *Act*. The Landlord bears the onus of proving her 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 damages.

Oil refill in the amount of $200.00

[25] The tenancy agreement states: "the following services and facilities are the responsibility of the Lessee: Snow removal for parking lot and walkways, grass cutting, electricity, internet, furnace oil." The Landlord has argued that it is intended that before the Tenants vacate they must fill the oil tank to where it was at the beginning of the tenancy. The Landlord submitted an Island Petroleum Statement into evidence which shows the Landlord filled the oil tank on January 3, 2023. The Landlord did not submit any invoice or receipt for the $200.00 cost to fill ¼ of the oil tank.

[26] The Tenants disputed the Landlord's interpretation, and argued nowhere in the tenancy agreement requires the oil tank to be filled at the end of the tenancy. The Tenants argued that while they live in the Rental Unit, they were responsible for the cost to fill the oil tank.

[27] The Officer finds that the tenancy agreement clearly puts the responsibility of furnace oil onto the Tenants. The Tenants used the oil for the Rental Unit. The Landlord submitted documentary evidence to establish that at the beginning of the tenancy, the oil tank was full. The Landlord provided direct testimony that the oil tank required ¼ a fill up the be full. The Officer finds that it was the Tenants' responsibility to fill the tank. **The $200.00 claim is allowed**.

Damage and cleaning in the amount of $340.00

[28] The Landlord claims it cost $200.00 to deep clean the Rental Unit. The Landlord submitted into evidence the tenancy agreement which states: “Schedule “D” The Lessees shall provide deep cleaning to the entire house at the end of the term, as they have a pet.” The Landlord stated that the Rental Unit was left in a dirty condition. The Landlord submitted photographs of the Rental Unit into evidence. The Landlord did not submit an invoice or receipt for the $200.00 expense.

[29] The Tenants disputed the Landlord’s argument and stated that the Rental Unit was cleaned.

[30] The Officer notes that clause 5 of the *Act* states:

> ***5. The Act cannot be avoided***
> *Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.*

[31] Although the tenancy agreement requires a higher standard of cleanliness, the Tenants cannot waive or release their rights, benefits or protections provided by the *Act*. A tenant is only required to leave a rental unit ordinarily clean at the end of a tenancy.

[32] The Officer finds that the Landlord’s photographic evidence, and direct testimony establishes that the Rental Unit, specifically, the appliances and the floor under the appliances was left in a condition below the standard of ordinarily clean. The Officer finds that the Landlord has not provided sufficient evidence to establish the $200.00 expense for deep cleaning. However, the Officer finds that based on the evidence submitted, and hearing the testimony from the parties, that the cleaning expense to return the Rental Unit to an ordinarily clean state is $75.00 (37.5% of the total expense claimed by the Landlord). **The claim is allowed in the amount of $75.00**.

[33] The Landlord claims that it cost $140.00 to repair minor damage in the Rental Unit. The Landlord submitted photographs of the Rental Unit. The Landlord did not submit any invoices or receipts for the $140.00 expenses.

[34] The Tenants disputed the Landlord’s damage claims. The Tenants stated that some of the damage was pre-existing, such as the backdoor lock. The Tenant stated that the scratches on the walls is normal wear and tear. The Tenants stated that the damage to the door frame was not caused by them, and it may have been one of the Landlord’s people moving items from the Rental Unit.

[35] The Officer finds that the Landlord has not provided sufficient evidence to conclude that the Tenants caused the alleged damage. Further, the Landlord did not provide any invoices or receipts to establish the $140.00 expense. The Officer further notes that there was mention of missing keys and remotes, which the Tenants admitted to forgetting to return. The Officer finds that no monetary amount was put forward for these missing items, and suggests that the Tenants return these items as soon as possible. **The damage claim is denied**.

Removal of pool, damage to lawn and removal of garbage in the amount of $310.00

[36] The Landlord stated that she is withholding $310.00 from the security deposit until the Tenant removes the pool, fixes the lawn and removes garbage from the Rental Unit. The Landlord submitted photographs of the pool and the garbage cans outside of the Rental Unit.

[37] The Tenant stated that he already removed the pool as of the date of the hearing, and intends to return to the Rental Unit once the weather is warmer to complete the lawn work and remove any remaining garbage.

[38] The Officer finds that the Landlord has not established a valid claim against the $310.00. The Officer finds that the Landlord did not provide evidence or detail to any alleged damage caused by the pool, and did not provide any cost associated with removing the garbage. **The claim is denied**.

Conclusion

[39] The Landlord has established a valid claim in the amount of $2,175.00 ($1,900.00 agreed upon + $200.00 + $75.00).

[40] The interest accrued on the $2,750.00 security deposit is $87.18.

[41] The Application is allowed, in part. The Landlord shall retain $2,175.00 from the security deposit.

[42] The Landlord shall return $662.18 to the Tenants forthwith.

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

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain $2,175.00 from the security deposit.

B. The Landlord shall return $662.18 to the Tenants forthwith.

DATED at Charlottetown, Prince Edward Island, this 18th 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.