

## Introduction

- [1] On December 4, 2023 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. On January 27, 2024 the Landlord amended the Application to include a request for additional compensation above the security deposit amount.
- [2] On December 7, 2023 the Landlord electronically served the Application.
- [3] On March 6, 2024 the Rental Office electronically provided the parties with the *Notice of Hearing*.
- [4] On March 25, 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 *Residential Tenancy Act* (the "Act").
- [6] On April 4, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Landlord and the Tenants participated at the hearing.

## Issues to be Decided

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

## Summary of the Evidence

- [7] On June 1, 2022 the parties entered into a written, fixed-term tenancy agreement for the period of June 1, 2022 to May 31, 2023. On June 1, 2023 the tenancy continued as a month-to-month agreement. Rent was \$2,100.00 due on the first day of the month. A security deposit of \$2,100.00 was paid on June 1, 2022. The Tenants vacated the Rental Unit on November 30, 2023.

### Landlord's Evidence and Submissions

- [8] The Landlord submitted 33-pages of documents into evidence including the Application, the *Landlord Condition Inspection Report (Form 5)* (the "Inspection Report"), photographs, e-mails between the parties, e-mails with the Rental Office, the amended version of the Application, text messages between the parties, and invoices/receipts.
- [9] The Landlord stated that the Tenants vacated the Rental Unit on November 30, 2023 and still owed November 2023 rent in the amount of \$2,100.00. The Landlord stated that the Tenants agreed he could retain the security deposit to cover the outstanding rent in a text message dated November 30, 2023 (page 32 of *Evidence Package*).
- [10] The Landlord stated that on December 2, 2023 an inspection of the Rental Unit was completed by the Landlord's mother. The Landlord submitted the findings of the inspection are detailed in the Inspection Report. The Landlord stated that there was undue damage in the Rental Unit. The Landlord stated that there was a broken window in one of the bedrooms, a broken bedroom door, and drywall damage. The Landlord stated that he is seeking \$481.79 in additional compensation to cover for these damages. The Landlord submitted a receipt from Home Depot for \$204.64 for the replaced door, and an invoice for \$277.15 to replace the glass for the window.
- [11] The Landlord stated that the Application details other expenses such as an unfilled oil tank. However, the Landlord stated he is no longer seeking these additional expenses as they have been resolved.

### Tenants' Evidence and Submissions

- [12] The Tenants submitted 2-pages of documents into evidence. These pages included an invoice from Irving Energy dated November 28, 2023 in the amount of \$951.99.
- [13] The Tenants stated that they did not dispute the agreement with the Landlord to retain the security deposit for November rent. However, the Tenants are disputing some of the Landlord's damage claims.
- [14] The Tenants stated that there are some inaccuracies in the Inspection Report. The Tenants stated that the person who completed the inspection and wrote the Inspection Report is not credible. The Tenants stated that the author of the Inspection Report is bias towards them due to a broken relationship.
- [15] The Tenants admitted to the undue damage to the bedroom door. The Tenants stated that their daughter damaged the bedroom door. The Tenants denied causing damage to the window. The Tenants stated that the glass in the window was broken during hurricane Fiona. The Tenants stated that they did not mention the damaged window to the Landlord.
- [16] The Tenants stated that the walls were not in good condition throughout the tenancy. The Tenants denied causing undue damage to the walls or drywall. The Tenants stated that they refilled the oil tank on November 28, 2023 and submitted the invoice into evidence.

### Analysis

- [17] The Application is made in accordance with clause 75 of the *Act* and seeks to make a claim against the security deposit, pursuant to clause 40(1) of the *Act*. Further, the Application seeks an order for additional compensation above the total amount of the security deposit. 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.*

- [18] Further, clauses 19(1), 28(3), (4), and (5) of the *Act* state:

**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.*

**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.

[19] The Landlord initiated the Application 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(s).

**Retaining the security deposit for rent in the amount of \$2,100.00**

[20] The Officer finds that the evidence establishes that the parties entered into a mutual agreement that the security deposit would be kept by the Landlord for rent owed in November 2023. The Officer notes that clause 40(3)(a) of the *Act* provides the Landlord with an exception for filing an application with the Rental Office to make a claim against the security deposit. Clause 40(3)(a) states:

**40. Retention by landlord, other circumstances**

(3) A landlord may retain an amount from a security deposit if

(a) at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant...

[21] The Officer finds that he does not need to make a finding regarding the Landlord retaining the full amount of the security deposit. The Landlord is exempted and entitled to retain the full amount of the security deposit (\$2,100.00) for rent owed.

**Additional compensation for damage in the amount of \$481.79**

[22] The Landlord claims that it cost \$204.64 to replace a door in the Rental Unit. The Landlord stated that this was undue damage caused by the Tenants. The Landlord submitted photographs of the damaged door, and an invoice from Home Depot in the amount of \$204.64. The Landlord did not submit "before" photographs of the Rental Unit, and specifically "before" photographs of the door.

[23] However, the Tenants did not dispute the Landlord's claim. The Tenants admitted that the undue damage to the door was caused by their young daughter.

[24] The Officer finds that the Landlord has established his claim based on the undisputed evidence. **The claim for \$204.64 to replace the door is allowed.**

- [25] The Landlord claims that it cost \$277.15 to replace glass in a window at the Rental Unit. The Landlord stated that this was undue damage caused by the Tenants, and that he was not made aware of the damage. The Landlord submitted photographs of the damaged and cracked window, and an invoice from Maximum Windows & Doors in the amount of \$277.15. The Landlord did not submit “before” photographs of the Rental Unit, and specifically “before” photographs of the window.
- [26] The Tenants denied causing the damage to the window. The Tenants stated that the damage happened hurricane Fiona.
- [27] The Officer finds that the Landlord has not provided convincing evidence to conclude that the Tenants’ actions or neglect caused the broken window. The Officer notes that the Landlord did not provide “before” and “after” photographs of the Rental Unit. Such evidence would have assisted the Officer in establishing the condition or the state of the Rental Unit at the beginning and the end of the tenancy. **The claim for \$277.15 to replace the broken window is denied.**

### Conclusion

- [28] The Application is allowed, in part. The Landlord is entitled to retain the full amount of the security deposit and interest.
- [29] The interest accrued on the \$2,100.00 security deposit is \$66.70.
- [30] The calculations are as follows:

Item	Amount
<b>Rent Owed &amp; Additional Compensation</b>	\$2,304.64
<b>Less Security Deposit &amp; Interest</b>	(\$2,166.70)
<b>Amount Owed to the Landlord</b>	\$137.94

- [31] The Tenants shall pay the Landlord \$137.94 by May 31, 2024.

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

### IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$2,166.70 from the security deposit and interest.
- B. The Tenants shall pay the Landlord \$137.94 by May 31, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 19th 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.