

Introduction

- [1] On March 22, 2024 the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord Application was filed to claim against the security deposit.
- [2] On March 22, 2024 the Landlord electronically served the Landlord Application.
- [3] On March 26, 2024 the Tenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the "Tenant Application") with the Rental Office. The Tenant Application was filed to request the security deposit be returned.
- [4] On March 22, 2024 the Tenant had previously served electronically the Tenant Application. (At the hearing, the Landlord's representative stated he did not receive the Tenant Application from the Tenant, and only received it from the Rental Office).
- [5] On March 26, 2024 the Rental Office mailed and electronically provided the parties with the *Notice of Hearing*.
- [6] On April 9, 2024 the *Evidence Package* was made available to the parties through Titan File. The *Evidence Package* contains 53-pages of documents and three videos.
- [7] All documents (including the Landlord Application, the Tenant Application, the *Notice of Hearing*, and the *Evidence Package*) were properly served to the parties in accordance with clause 100(1) of the *Residential Tenancy Act* (the "Act").
- [8] On April 16, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Landlord was represented at the hearing by the Landlord's Representative. The Tenant participated at the hearing, and had a representative (the "Tenant's Representative").

Issue to be Decided

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

Summary of the Evidence

- [9] On May 22, 2023 the parties entered into a written, month-to-month tenancy agreement. Rent was \$825.00 due on the first day of the month. A security deposit of \$825.00 was paid on May 22, 2023. The Rental Unit is situated in a 12-unit building (the "Residential Property"). The Tenant vacated the Rental Unit on March 1, 2024.

Landlord's Evidence and Submissions

- [10] The Landlord submitted 9-pages of documents into evidence including: text message conversations with the parties and photographs of the Rental Unit.
- [11] The Landlord's Representative stated that on February 26, 2024 the Tenant gave notice by text message he would be vacating on March 1, 2024. The Landlord's Representative stated that he tried to re-rent the Rental Unit, despite the short notice, but was not able to re-rent it until April 1, 2024. The Landlord's Representative stated that the Rental Unit was left dirty and required painting. The security deposit is being retained to cover March 2024 rent, and to clean the Rental Unit.

- [12] The Landlord's Representative stated that he had an oral conversation with the Tenant regarding keeping the security deposit. The Landlord's Representative stated that he was only going to charge the Tenant ½ a month's rent and some cleaning costs. He offered to return \$100.00 to the Tenant. The Landlord's Representative stated that the Tenant agreed to this offer, but never sent his e-mail for e-transfer. The Landlord's Representative stated that the Tenant changed his mind and requested the full security deposit be returned. The Landlord's Representative stated that he then filed the Landlord's Application once he determined an agreement could not be reached with the Tenant.

Tenant's Evidence and Submissions

- [13] The Tenant submitted 24-pages of documents into evidence. These documents include: text message conversations with the parties, time-stamped photographs of the Rental Unit, the tenancy agreement, and a written submission. The Tenant also submitted three videos of the Rental Unit into evidence.
- [14] The Tenant's Representative stated that the Rental Unit was cleaned before the Tenant vacated. The Tenant's Representative stated that the Rental Unit had many pre-existing issues, and that the Tenant informed the Landlord's Representative of these issues throughout the tenancy. The Tenant's Representative stated that the Tenant vacated on February 23, 2024 and informed the Landlord's Representative on February 26, 2024. The Tenant's Representative denied the Landlord's Representative offer to return \$100.00 from the security deposit. The Tenant's Representative stated that the Tenant vacated due to the condition of the Rental Unit, and having a new born baby. The Tenant submitted it would not be safe to bring a new born baby back to the Rental Unit.

Analysis

- [15] The Landlord 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*. The Tenant Application seeks a return 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.

- [16] Further, clauses 28(3), (4), (5) and 55(2) 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; 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.*

55. *Notice for monthly or other periodic tenancy*

- (2) *A tenant may end a month-to-month or other periodic tenancy by giving the landlord a notice of termination effective on a date that*
- (a) *is not earlier than one month after the date the landlord receives the notice; and;*
- (b) *is the day before the day that rent is payable under the tenancy agreement.*

- [17] Despite the Tenant's Application, the Landlord initiated the Landlord's Application under the *Act*. The Landlord bears the onus of proving its 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).

March 2024 rent in the amount of \$825.00

- [18] The evidence establishes that the parties agreed to a month-to-month tenancy agreement. Clause 55(2) of the *Act* requires a tenant to give a landlord notice that is not earlier than one month, and is the day before the day that rent is payable under the tenancy agreement. In this case, the evidence establishes that the Tenant sent a text message to the Landlord's Representative on February 26, 2024 providing notice that he would be vacating the Rental Unit on March 1, 2024. The Officer finds that for the Tenant to be in compliance with clause 55(2) he would have had to provide the Landlord with written notice on or before January 31, 2024, as rent is due on the first day of the month.
- [19] The Officer notes that the Landlord's Representative stated that he attempted to re-rent the Rental Unit, but was not able to find a new tenant until April 1, 2024. The Officer finds that the Landlord took appropriate mitigating steps in attempting to re-rent the Rental Unit.
- [20] The Tenant gave the Landlord's Representative notice on February 26, 2024, which means the tenancy agreement would not terminate until March 31, 2024. Therefore, the Officer concludes that the Tenant did not comply with clause 55(2) and the Landlord has established a valid claim for retaining the security deposit for outstanding rent for March 2024. This claim is allowed.

Undue Damage and Cleaning

- [21] The Landlord's Representative did not provide any dollar amount for the alleged undue damage and the cleaning. The Landlord is not seeking any additional compensation above the security deposit.

- [22] The Officer finds that the parties provided conflicting testimony about the cause of the undue damage. The Officer finds that the Tenant provided time-stamped photographs from the start of the tenancy. This evidence corroborates the Tenant’s testimony that the damage was pre-existing. The Landlord has not established its claim regarding undue damage. This claim is denied.

- [23] The Officer finds that the parties provided conflicting testimony about the standard of cleanliness for the Rental Unit. The Tenant submitted time-stamped photographs, and three videos into evidence. The Landlord submitted photographs from the end of the tenancy into evidence. The Officer notes that the Landlord’s photographs do show some areas of the Rental Unit in a condition below ordinarily clean. However, the Officer finds that the Landlord’s evidence does not have “before” photographs from the start of the tenancy, and the Landlord did not submit an inspection report into evidence. Both of these items would have been of assistance to the Officer in establishing the condition or the state of the Rental Unit before and after the tenancy. The Officer finds that the Landlord has not established a valid claim regarding ordinary cleanliness. This claim is denied.

Conclusion

- [24] The Landlord’s Application is allowed. The Landlord is entitled to retain the full amount of the security deposit.

- [25] The Tenant’s Application is denied.

- [26] The accrued interest on the \$825.00 security deposit is \$18.39.

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

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$825.00 from the security deposit.

- B. The Landlord shall pay the Tenant \$18.39 in accrued interest forthwith.

DATED at Charlottetown, Prince Edward Island, this 22nd 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.