

## Introduction

- [1] On March 8, 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 March 8, 2024 the Landlord electronically served the Application to the Tenants.
- [3] On March 27, 2024 the Rental Office provided the parties with the *Notice of Hearing* by mail.
- [4] On April 11, 2024 one of the Tenants confirmed their e-mail address with the Rental Office and confirmed that he did not want to participate at the hearing.
- [5] On April 12, 2024 the *Evidence Package* was electronically sent to the parties. The *Evidence Package* contains 19-pages of documents, and 1-page of additional documentary evidence.
- [6] All documents (including the 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").
- [7] On April 16, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Landlord had a representative participate in the hearing (the "Representative"). At 11:00 a.m. the Tenants did not call into the teleconference hearing. The Rental Officer delayed the hearing for ten minutes and contacted the Tenants. Two of the Tenants could not be reached. One of the Tenants called into the teleconference hearing and participated (the "Tenant"). The Tenant stated he was representing the Tenants.

## Issue to be Decided

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

## Summary of the Evidence

- [8] The parties entered into a written, fixed-term tenancy agreement for the period of October 1, 2022 to September 30, 2023. The tenancy continued as a month-to-month agreement. Rent was \$1,848.85 due on the first day of the month. A security deposit of \$1,795.00 was paid on October 2, 2022. The Tenants vacated the Rental Unit on February 29, 2024.

### Landlord's Evidence and Submissions

- [9] The Landlord submitted 14-pages of documents into evidence including: An invoice, photographs of the Rental Unit, and a *Landlord Condition Inspection Report (Form 5)* (the "Inspection Report"). One page of additional evidence was submitted including an e-mail exchange between the Representative and one of the Tenants.
- [10] The Representative stated that a new tenant was ready to move into the Rental Unit for March 1, 2024. However, the Rental Unit required cleaning after the Tenants vacated. The Representative stated that the Inspection Report was completed, and the photographs were taken on March 1, 2024 by an employee of the Landlord's property management company. The Representative stated that the Tenants left the Rental Unit below the standard of reasonably clean. The Representative stated that a lot of the labour hours were allocated to cleaning.

- [11] The Representative stated that the total expense on the invoice was \$1,795.00, which includes: garbage removal to the dump, repairs and painting to the walls, a deep cleaning, removal of carpet, installation of floors, and labour. The Representative stated that a significant part of the damage and requirement for painting was from removing light strips. The Representative acknowledged that the light strips were installed by the former tenants, and the strips remained when the Tenants moved into the Rental Unit. However, the Representative stated that the Tenants took responsibility for the Rental Unit 'as is'. The Representative noted the additional evidence submitted, an e-mail dated September 28, 2022.

### **Tenants' Evidence and Submissions**

- [12] The Tenants did not submit any documents into evidence. However, one of the three tenants (the "Tenant") did participate at the hearing, representing the Tenants. The Tenant provided testimony and submissions in response to the Application.
- [13] The Tenant admitted that some garbage and items were left in the Rental Unit. The Tenant denied causing damage to the bedroom walls and floor. The Tenant stated that the filling of holes, and painting is normal wear and tear. The Tenant stated that the light strips were already installed when they moved into the Rental Unit. The Tenant stated that despite the other tenant saying they will take the Rental Unit 'as is', the Tenants should not be responsible for having the strips removed. The Tenant stated that 14 hours of labour is not reasonable.

### **Analysis**

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

- [15] Further, clauses 28(3), (4), (5) and 39(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*

**39. *Obligations on vacating***

- (2) *When a tenant vacates a rental unit, the tenant shall*
- (a) *leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear; and*
  - (b) *give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

- [16] The Landlord initiated the 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 that there is sufficiently clear, convincing and cogent evidence to support the claim(s) and the value of the alleged damage(s).

**Garbage removal in the amount of \$99.00**

- [17] The evidence establishes that the Tenants left garbage and personal items at the Rental Unit after they vacated. The Tenants did not dispute this point. **The Officer finds that this claim is allowed.**

**Painting and hole repairs in the amount of \$303.00**

- [18] The Representative and the Tenant provided conflicting submissions regarding this claim. The Tenant disputed causing the damage, and submitted that such costs are normal wear and tear. The Representative stated the Tenants took responsibility of the Rental Unit 'as is' when they moved into the Rental Unit. The Officer notes that the Landlord submitted photographs of the Rental Unit after the tenancy ended. However, the Landlord did not submit into evidence photographs from the start of the tenancy. The Representative did not dispute that the light strips were already in the Rental Unit when the Tenants moved in.

- [19] After reviewing the evidence, the Officer finds that the Landlord has not established a valid claim. The Officer finds that the Tenants should not bear the financial burden of removing the light strips, and repairing any because this damage was not caused by the Tenants. The Landlord had the opportunity to remove the light strips and/or charge the former tenants this expense. Instead, the Landlord permitted the Tenants to move into the Rental Unit and left the light strips intact. Further, the Officer includes the painting expense as not being established. **The claim is denied.**

**Repairs to the bedroom floor in the amount of \$200.00**

- [20] The Landlord submitted into evidence photographs of the Rental Unit at the end of the tenancy. However, the Landlord did not submit into evidence photographs from the start of the tenancy. The Officer finds that the photographs submitted into evidence do not establish any visible undue damage to the carpet. The Tenant disputed causing any damage to the Rental Unit. The Officer finds that the Landlord has not established a valid claim. **The claim is denied.**

**Deep Cleaning and labour in the amount of \$1,193.00**

- [21] The Representative and the Tenant provided conflicting submissions regarding this claim. The Tenant stated that the expense is not reasonable. The Representative stated that a deep clean was required and that the majority of the labour expense was put towards cleaning and removing the garbage.
- [22] The Officer finds that the Landlord's photographs establish that the Rental Unit was left in a condition below the standard of reasonably clean. However, the Officer notes that clause 39(2) only requires the Tenants to leave the Rental Unit reasonably clean. Any standard above reasonably clean, such as a 'deep clean' or 'professional clean' is not the Tenants' financial obligation. The Officer reduces the cleaning expense to \$250.00. This represents 50% of the cleaning expense claimed by the Landlord.
- [23] The Officer finds that the Landlord submitted into evidence an invoice with 14 hours of labour at \$49.50 per hour. The Representative stated that the majority of the labour was allocated to cleaning and garbage removal. However, the Officer notes that the invoice also includes 10 hours dedicated to "Deep Clean" at \$50.00 per hour. The Officer has already reduced the cleaning rate by half. The Officer finds that the documentary evidence submitted suggests that 4 hours of labour is appropriate to expense for garbage removal and the time associated with any miscellaneous clean up. However, the Officer adjusts the hourly rate from \$49.50 to \$30.00 per hour for this labour. **The claim for labour and cleaning is allowed in the amount of \$370.00.**

**Conclusion**

- [24] The Application is allowed, in part.
- [25] The interest accrued on the \$1,795.00 security deposit is \$57.57, being a total of \$1,852.57.
- [26] The Officer's calculations are as follows:

<b>Item</b>	<b>Amount</b>
<b>Total security deposit &amp; interest</b>	\$1,852.57
<b>Less Landlord's claim</b>	(\$469.00)
<b>Amount returned to the Tenants</b>	\$1,383.57

- [27] The Landlord is entitled to retain \$469.00 from the security deposit.
- [28] The Landlord shall return \$1,383.57 to the Tenants by May 15, 2024.
- [29] **This Order will be served to the parties by e-mail.**

**IT IS THEREFORE ORDERED THAT**

- A. The Landlord shall retain \$469.00 from the security deposit.
- B. The Landlord shall return the remaining \$1,383.57 from the security deposit to the Tenants by May 15, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 24th day of April, 2024.

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(sgd.) Cody Burke  
Cody Burke  
Residential Tenancy Officer

**NOTICE**

**Right to Appeal**

This Order can be appealed to the Island Regulatory and Appeals 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.