

Introduction

- [1] On March 11, 2024, the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord filed the Application to make a claim against the security deposit pursuant to clause 40(1) of the *Residential Tenancy Act* (the "Act").
- [2] All documents (including the Application, the *Notice of Hearing* and the *Evidence Package*) were properly served in accordance to clause 100(1) of the *Act*.
- [3] On April 16, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing himself. The Tenant appeared, representing himself.

Issue to be Decided

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

Summary of the Evidence

- [4] On June 1, 2023, the parties entered into a written, fixed-term tenancy agreement. The fixed-term was from June 1, 2023, to May 31, 2024. Rent was \$2,680.00 payable on the first day of the month. A security deposit of \$2,500.00 was required and paid at the beginning of the tenancy. The Tenant vacated on February 29, 2024, due to an eviction notice for non-payment of rent.

Landlord's Evidence and Submissions

- [5] The Landlord submitted six pages of documents into evidence including a copy of the tenancy agreement, two Form 4(A) Eviction Notices, and a Form 2(B) for a previous Rental Office matter that had been resolved. The Landlord testified the Tenant owes \$13,375.00 in outstanding rent but he is only requesting to keep the security deposit for rent owing and he is not seeking compensation above the security deposit.
- [6] The Landlord testified the Tenant moved into the Rental Unit with two other individuals but only the Tenant was named on the tenancy agreement. The Landlord stated he allowed the Tenant to have roommates to help with the rent. In July 2023, one of the roommates left the Rental Unit and by the end of August 2023 the other roommate had moved out. After the roommates vacated, the Tenant and Landlord inspected the basement of the Rental Unit and observed either dirt or mold on the walls. The Landlord stated he hired a company to test for mold and no mold was found.
- [7] The Landlord stated after the roommates had vacated, the Tenant had a difficult time paying rent by himself. On November 2, 2023, the Landlord served the Tenant with an eviction notice for non-payment of rent, however the parties came to a payment arrangement and the eviction notice was rescinded. The Tenant was still unable to pay the full amount of rent owed and a second eviction notice was served on January 22, 2024, to vacate by February 10, 2024.
- [8] The Landlord stated the parties agreed that if the Tenant painted the interior of the Rental Unit, then the Tenant could stay until the end of February 2024. The Landlord stated he did not agree to pay or reimburse the Tenant for painting but only to extend the vacate date. He stated the Tenant was not able to secure more funds for rent and the Landlord secured another tenant for March 2024. The Tenant vacated on February 29, 2024.

- [9] The Landlord's breakdown of unpaid rent for each month is as follows:

Month	Amount Unpaid Each Month
June 2023	\$0.00
July 2023	\$180.00
August 2023	\$330.00
September 2023	\$1,605.00
October 2023	\$2,680.00
November 2023	\$2,680.00
December 2023	\$540.00
January 2024	\$2,680.00
February 2024	\$2,680.00
Total Rent Owing	\$13,375.00

Tenant's Evidence and Submissions

- [10] The Tenant submitted a one-page written submission into evidence. The Tenant stated he agreed the Landlord's calculations for rent owing are correct. The Tenant stated that he should not owe any rent because of work he performed for the Landlord, because he was overcharged for cable, and because he was unable to rent out the basement of the Rental Unit to new roommates.
- [11] The Tenant testified that he had three roommates and not two as stated by the Landlord. He stated two of the roommates moved out of the Rental Unit and the third roommate was a refugee who was no longer receiving government funds. The Tenant stated he had a difficult time paying rent without additional roommates.
- [12] The Tenant stated he notified the Landlord about possible mold in the Rental Unit in September 2023 after his roommates had left. He stated Landlord promised to supply the Tenant with paint so he could repair and paint the basement to enable the Tenant to re-rent the rooms vacated by his roommates. The Tenant stated the Landlord did not follow through with that agreement and the Landlord wanted rent paid before supplying the paint. The Tenant stated without painting the basement he was not able to be re-rent the rooms and this made it difficult for the Tenant to cover the full amount of rent.
- [13] The Tenant stated the Landlord did not show him any of the cable invoices and he believes the Landlord was over charging him \$60.00 per month for cable. The Tenant stated he believes he was being charged \$180.00 per month instead of \$120.00 per month for nine months, totaling \$540.00.
- [14] The Tenant stated the parties agreed the Tenant could remain in the Rental Unit for the last two weeks of February 2024 if the Tenant painted the Rental Unit. The Tenant stated he painted and repaired the Rental Unit and tried to work something out with the Landlord to remain in the Rental Unit. The Tenant stated the Landlord advised him on February 29, 2024, the Rental Unit was being re-rented to another tenant and the Tenant vacated on that date.
- [15] The Tenant stated he should be credited for \$4,000.00 for 90 hours of painting and repairs to the Rental Unit, \$540.00 for the overpayment of the cable bill, and credit for not being able to rent the basement of the Rental Unit for 6 months.

Post Hearing Evidence and Submissions

- [16] During the hearing the Landlord requested to submit further evidence regarding the testing of the mold in the Rental Unit and the Tenant requested to submit photographs of the condition of the Rental Unit. The Officer advised both parties they could submit additional evidence by April 19, 2024.
- [17] On April 17, 2024, the Landlord submitted a letter from a company stating they tested for mold in the basement of the Rental Unit. The letter stated no mold was found in the basement and the company removed some baseboard at the request of the Landlord. The letter was provided to the Tenant on April 18, 2024, for any further submissions by April 19, 2024.
- [18] On April 18, 2024, the Tenant submitted five photographs of the interior of the Rental Unit. On April 19, 2024, the Tenant submitted an email stating the company that checked for the mold was owned by the Landlord's brother and the testing for the mold was not done properly.

Analysis

- [19] 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*. 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.*

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.*

- [20] The Landlord initiated the Application as required 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 and convincing evidence to support the claim and the value of the alleged claim.

Is the Landlord entitled to retain the security deposit?

- [21] The Officer finds that both parties agreed the Tenant owes \$13,375.00 in outstanding rent. This amount of rent owing was corroborated by a written summary of the outstanding rent owing and supported by two eviction notices for rent owing. The Officer finds that the Landlord has provided sufficient evidence to establish the Tenant did not pay rent when it was due under the tenancy agreement, totaling \$13,375.00, as outlined in clause 19.(1) of the *Act*. The Officer finds the Landlord is entitled to retain the security deposit plus interest for rent owing.

[22] The calculations are as follows:

Item	Amount
Security Deposit	\$2,500.00
Interest (June 1/23 – April 26/24)	\$54.63
Total to be retained by the Landlord	\$2,554.63

[23] In accordance 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

[24] The Application is allowed.

[25] The Landlord shall retain the full amount of the security deposit plus interest in the amount of \$2,554.63.

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

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain the full amount of the security deposit plus interest in the amount of \$2,554.63.

DATED at Charlottetown, Prince Edward Island, this 26th 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.

