

Introduction

- [1] On March 12, 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 make a claim against the security deposit pursuant to clause 40(1) of the *Residential Tenancy Act* (the "Act") and for compensation above the security deposit.
- [2] 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*.
- [3] On April 25, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Landlord representative (the "Representative") and the Tenant participated.

Issues to be Decided

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

Summary of the Evidence

- [4] On December 1, 2019, the Tenant and a previous landlord entered into a written fixed-term tenancy agreement for the Rental Unit. In 2022 the current Landlord purchased the building containing the Rental Unit and the tenancy agreement continued. Rent was \$862.00 due on the first day of the month. A security deposit of \$500.00 was paid. The Tenant vacated on February 29, 2024.

Landlord's Evidence and Submissions

- [5] The Representative submitted several documents into evidence including move-in and move-out inspection reports, receipts, invoices, messages between the parties, and videos and photographs of the Rental Unit. The Representative stated the Tenant caused damage to the Rental Unit beyond reasonable wear and tear and she is seeking to retain the security deposit with interest as well as \$2,618.55 above the security deposit for cleaning and repairs. The Representative stated the Tenant had sent a message to the Landlord stating the Landlord could retain the security deposit.
- [6] The Representative stated a move-in inspection was conducted on November 30, 2019, and a move-out inspection was conducted on March 1, 2024. During the move-out inspection damages were found to the Rental Unit such as to the floors, trim, kitchen countertop, and microwave. The Tenant left items in the Rental Unit when he vacated which had to be disposed of. The Tenant did not properly clean parts of the Rental Unit such as the bathroom, stove, windows, and behind the fridge and stove. All the damaged items were approximately 14 years old.
- [7] The Representative stated the kitchen taps were loose which caused water to leak and this damaged the kitchen counter. The Representative stated she spoke to the Tenant about the taps during the move out inspection and the Tenant said he did not know he could call for repairs. The Representative stated he had called for repairs in the past for other issues. She stated if the taps were repaired early on then the counter would not have been damaged.
- [8] The Representative stated there were several parts of the living room and bedroom floor which were damaged and scratched and the entire flooring in both rooms had to be replaced. She stated they could not just repair certain boards due to where the damage had occurred and they could not find the same flooring.

- [9] The Representative stated the Tenant's pet damaged the molding and would not be considered reasonable wear and tear. She stated the handle on the microwave was broken so she had to purchase a new microwave as a replacement. The Representative stated she could not re-rent the unit for 7 days in March 2024 because of the repairs which were required.
- [10] The Representative stated the invoice for \$68.69 was for a part ordered in error and should not be expensed to the Tenant. She stated she was not charging the Tenant for painting as she was going to paint anyway. The breakdown of the Landlords expenses are as follows:

<u>Item</u>	<u>Requested</u>
Floor	\$1,015.63
Counter	\$243.23
Molding	\$125.81
Contractor labour	\$747.50
Microwave	\$425.00
Cleaning and waste watch	\$313.00
Rent Lost for 7 days	\$200.48
Total	\$3,070.65

Tenant's Evidence and Submissions

- [11] The Tenant submitted two videos and several photographs of the Rental Unit into evidence. The Tenant stated he agreed the Landlord could retain the security deposit for cleaning and damages but disputes he should be responsible for the expenses above the security deposit.
- [12] The Tenant stated he did damage seven floor boards but disputed that he should pay for the full replacement of the flooring. He stated he accidentally damaged the handle on the microwave but that he should only have to pay for it to be repaired. He stated he does not dispute the Landlord's expenses for cleaning and waste watch disposal.
- [13] The Tenant stated he did not observe the damage to the counter and should not be responsible for its replacement. He disputed he should be responsible for the lost rent as it is the Landlord's responsibility to get the Rental Unit ready for the next tenant. He disputed that he should have to pay for the contractor expenses. He stated the damage to the molding should be considered wear and tear as he had pets and some damage is to be expected.

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*. Further, the Landlord is seeking additional compensation above the amount of the security deposit. In such matters where there is a claim made against the security deposit or for compensation, it is the Landlord's burden to prove, on a balance of probabilities, any and all claims made. This means that the decision-maker must be satisfied there is sufficiently clear and convincing evidence to support the claims made. The relevant law is as follows:

28. 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.*
- (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.

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.

85. Powers of the Director

- (1) After hearing an application, the Director may make an order
- (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.

Issue i: Is the Landlord entitled to retain the security deposit?

- [15] The Tenant testified that he agreed the Landlord could retain the security deposit for cleaning and damages. The Officer therefore finds that the Landlord is entitled to retain the security deposit plus interest.

Issue ii: Is the Landlord entitled to compensation above the security deposit?**Flooring**

- [16] The Officer concludes that the photo and video evidence, the testimony of the parties, and the details of the invoices establish the damage to the flooring was beyond reasonable wear and tear and it was required to be repaired. The Officer finds that the replacement of the entire flooring was required due to the location of the damages and because replacement pieces could not be sourced. Had the damage not occurred, the Landlord could have waited several more years to replace the existing flooring.
- [17] The Island Regulatory and Appeals Commission ("the Commission") in Order LR24-06 made such comments as it relates to considering depreciation as a result of the principle of betterment:

The Tenants' representative has asked the Commission to account for depreciation in determining the amount to be awarded to the Landlords. The Act does not expressly mention depreciation, however in order to reconcile subsections 28(4) and 28(5), the Commission finds it necessary to look to the common law. The principle of betterment has been applied in similar situations by Canadian courts, with the effect being that depreciation is considered. The basic principle at common law is that a party should not be put in a better position than they would have been had the wrongdoing not occurred.

- [18] The Officer finds that the facts in LR24-06 are similar as the Commission determined a 10-year old floor which had to be replaced warranted a (10%) ten percent reduction or depreciation of cost. In this case, the Officer finds it appropriate to apply a (14%) fourteen percent reduction or depreciation of cost as the flooring in this case is older than the flooring in LR24-06. The Officer awards the Landlord **\$873.44** (\$1,015.63 less 14% or \$142.18).

Countertop

- [19] The Officer concludes that the photo and video evidence, the testimony of the parties, and the details of the invoices, provide the Officer with enough evidence to conclude, on a balance of probabilities, that the damage to the countertop was beyond reasonable wear and tear and it was required to be repaired. The evidence establishes that the Tenant was aware of the leaking taps but did not notify the Landlord, which caused the damage to the countertop.
- [20] Had the damage not occurred, the Landlord could have waited several more years to replace the existing countertop. The Officer applies the same principles of depreciation as noted above and finds it appropriate to apply a (14%) fourteen percent reduction or depreciation of cost and awards the Landlord **\$209.17** (\$243.23 less 14% or \$34.05).

Molding

- [21] The Officer concludes that the photo and video evidence, the testimony of the parties, and the details of the invoices, provide the Officer with enough evidence to conclude, on a balance of probabilities, the damage to the molding was beyond reasonable wear and tear, and it was required to be repaired.
- [22] Had the damage not occurred, the Landlord could have waited several more years to replace the existing molding. The Officer applies the same principles of depreciation as noted above and finds it appropriate to apply a (14%) fourteen percent reduction or depreciation of cost and awards the Landlord **\$108.19** (\$125.81 less 14% or \$17.61).

Contractor Labour

- [23] As the Officer has found that the floor, countertop, and molding were required to be repaired, the Officer finds that the Landlord's cost for contractor labour, supported by a submitted invoice, to be reasonable. In Order LR24-06, the Commission also applied the principle of depreciation to the labour costs for repairs.
- [24] Had the damage not occurred, the Landlord could have waited several more years to before incurring these expenses. The Officer applies the same principles of depreciation as noted above and finds it appropriate to apply a (14%) fourteen percent reduction or depreciation of cost and awards the Landlord **\$642.85** (\$747.50 less 14% or \$17.61).

Microwave

- [25] The evidence establishes the microwave was approximately 14 years old and the average life expectancy of a microwave is approximately 10 years. The Officer finds it reasonable to expect that a handle of a microwave may become loose or damaged after repeated use during this length of time. Furthermore, the Representative chose to replace the microwave instead of having it repaired, the cost of which should not be the responsibility of the Tenant. The Officer does not find the Landlord has established the damage to the microwave would not be considered reasonable wear and tear. This claim is denied.

Cleaning / Waste Watch

- [26] The Officer concludes that the photo and video evidence, the testimony of the parties, and the details of the invoices, provide the Officer with enough evidence to conclude, on a balance of probabilities, that the Rental Unit was left in a state below reasonably clean when the Tenant vacated. The Officer awards the Landlord **\$313.00**.

Rent

[27] The Representative stated she was unable to re-rent the Rental Unit for seven days because it took additional time to clean and repair the unit after the Tenant vacated. However, the Officer notes that no evidence was submitted to establish that there was another tenant available to move into the Rental Unit during that time. Furthermore, the Representative stated the Rental Unit was going to be painted after the Tenant vacated, which would have required the Rental Unit to be vacant for several days while the painting was occurring. This claim is denied.

[28] The breakdown of the allowed expenses are as follows:

Item	Allowed
Floor	\$873.44
Counter	\$209.17
Molding	\$108.19
Contractor labour	\$642.85
Cleaning and waste watch	\$313.00
Total	\$2,146.65

Conclusion

[29] The Application is allowed in part. The Landlord's compensation is calculated as follows:

Item	Amount
Landlord's Expenses	\$2,146.65
Less Security Deposit	(\$500.00)
Less Interest (Dec. 1/19 – May 1/24)	(\$22.92)
Total Owed by Tenant	\$1,623.73

[30] The Landlord may retain the entire security deposit of \$522.92.

[31] The Tenant shall pay the Landlord \$1,623.73 by May 30, 2024.

[32] This Order will be sent to the parties by email.

IT IS THEREFORE ORDERED THAT

- A. The Landlord may retain the entire security deposit of \$522.92.
- B. The Tenant shall pay the Landlord \$1,623.73 by May 30, 2024.

DATED at Charlottetown, Prince Edward Island, this 1st day of May, 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.