

Introduction

- [1] On March 18, 2024, the Landlords filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The purpose of the Application is to request that the Tenants pay outstanding rent, to make a claim against the security deposit, and to seek compensation above the security deposit, pursuant to the *Residential Tenancy Act* (the "Act").
- [2] The Notice of Hearing was emailed to the parties on April 5, 2024. A copy of the Evidence Package was emailed to the parties on April 23, 2024. On May 2, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlords participated however the Tenants did not call into the hearing. The Officer called the Tenants but the phone number was not in service. The Officer waited 10 minutes and proceeded with the hearing in the Tenants' absence.

Previous Hearing

- [3] On February 22, 2024, the parties had a previous hearing as the Landlords were requesting that the Tenants vacate the Rental Unit and for the Sheriff to put the Landlords into possession of the Rental Unit. The Tenants did not participate in that hearing either. The Tenants were ordered (LD24-061) to vacate the Rental Unit by March 4, 2024.

Issues to be Decided

- i. Do the Tenants owe the Landlords rent?
- ii. Are the Landlords entitled to retain the security deposit?
- iii. Are the Landlords entitled to compensation above the security deposit?

Summary of the Evidence

- [4] On October 1, 2023, the parties entered into a written month-to-month tenancy agreement for a rental unit (Unit 1), which is situated in a four-plex (the "Residential Property"). On November 7, 2023, the Tenants moved into the Rental Unit (Unit 2), in the same Residential Property. Rent was \$1,500.00 due on the 1st day of the month. A security deposit of \$1,500.00 was required but only \$700.00 had been paid. The Tenants vacated on March 4, 2024.

Landlords' Evidence and Submissions

- [5] The Landlords submitted a written statement, a security deposit receipt, and a list of the Tenants' abandoned personal property into evidence. The Landlords stated the Tenants moved from Unit 1 to Unit 2 (the Rental Unit) on November 7, 2023. The \$700.00 security deposit paid for Unit 1 was transferred to the Rental Unit and the remainder of a \$1,500.00 security deposit for the new unit was required to be paid. The Tenants did not pay the extra \$800.00 for the new security deposit and only \$700.00 was paid. The Tenants did not pay rent for February 2024 in the amount of \$1,500.00 and owe rent for four days in March 2024.
- [6] The Landlords stated the Rental Unit was left unclean and it cost them \$500.00 in labour to clean the appliances and to clean the walls and floor due to smoking, as smoking was not allowed. It cost \$200.00 to repair the floors and \$100.00 to clean and repair around the tub. The repairs and cleaning totaled \$800.00 and the Landlords are seeking to retain the \$700.00 security deposit and \$100.00 in compensation above the security deposit.

Tenants' Evidence and Submissions

- [7] The Tenants did not submit any evidence or participate in the hearing.

Director's Evidence

- [8] The Director included Order LD24-061 as evidence for this hearing. Order LD24-061 was issued on February 23, 2024, and included the same parties as this hearing. The Officer found that the Tenants failed to pay rent for February 2024 in the amount of \$1,500.00 and the Tenants were ordered to vacate the Rental Unit by March 4, 2024.

Analysis

- [9] The Landlords are seeking rent owing, to retain the security deposit, and for additional compensation above the security deposit. The Landlords initiated the Application and bear the onus of proving their claims on a balance of probabilities. 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.*

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.*

Issue i: Do the Tenants owe the Landlords rent?

- [10] The Officer has reviewed the testimony of the Landlords, the documentary evidence, and Order LD24-061, and finds that the Landlords have established the Tenants did not pay rent when it was due under the tenancy agreement. The Officer finds the Tenants owe \$1,500.00 for February 2024 and \$193.55 for March 1-4, 2024, **totaling \$1,693.55**. Rent owing for March 2024 is calculated as follows:

(4 days / 31 days) x \$1,500.00	\$193.55 rent owing
---------------------------------	---------------------

Issues ii and iii: Are the Landlords entitled to retain the security deposit and to compensation above the security deposit?

- [11] The Landlords stated it cost them \$800.00 to repair and clean the Rental Unit after the Tenants vacated. However, the Officer notes the Landlords have not provided any photographs or inspection reports to establish the condition of the Rental Unit before the Tenants moved in or when they moved out. Further, the Landlords have not provided any documentary evidence, such as receipts or invoices, to quantify the amount of cleaning or repairs required. The Officer finds that such evidence would have been of assistance for the determination of this matter.
- [12] The Officer finds the Landlords have not provided sufficient evidence to establish they are entitled to retain the security deposit or for compensation above the security deposit for cleaning or repairs.
- [13] However, as the Officer has found that the Landlords are entitled to rent owing, the Officer finds that the Landlords are entitled to retain the security deposit plus interest to partially offset the rent owing. The calculations are as follows:

Item	Amount
Rent Owing	\$1,693.55
Less Security Deposit	(\$700.00)
Less Interest (Oct 1/23 – May 31/24)	(\$10.95)
Total Owed to the Landlord	\$982.60

Conclusion

- [14] The Application is allowed in part.
- [15] The Landlords shall retain the security deposit and interest in the amount of \$710.95.
- [16] The Tenants shall pay the Landlords \$982.60 by June 20, 2024.

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall retain the security deposit and interest in the amount of \$710.95.
- B. The Tenants shall pay the Landlords \$982.60 by June 20, 2024.

DATED at Charlottetown, Prince Edward Island, this 31st 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.