

## Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On March 14, 2024 the Landlord’s representative (the “Representative”) filed a *Landlord Application to Determine Dispute (Form 2(B))* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed with the Rental Office for the following remedies:
  - 1) To make claim against the full amount of the security deposit and interest;
  - 2) To seek compensation that exceeds the total amount of the security deposit; and
  - 3) To seek payment for outstanding rent.
- [3] With filing the Application with the Rental Office, the Representative electronically served the Application to the Tenant.
- [4] On April 4, 2024, the Rental Office provided the parties with the first notice of a teleconference hearing (the “Notice of Hearing”) by ordinary mail and e-mail.
- [5] The Tenant requested the Rental Office adjourn the first Notice of Hearing date. The Rental Office approved the adjournment.
- [6] On April 24, 2024, the Rental Office provided the parties with the second Notice of Hearing by ordinary mail and e-mail.
- [7] The Tenant requested the Rental Office adjourn the second Notice of Hearing date. The Rental Office approved the second adjournment.
- [8] On April 26, 2024, the Rental Office provided the parties with the third Notice of Hearing by e-mail.
- [9] On April 30, 2024 the Rental Office provided the parties with the evidence package (the “EP”) by e-mail. The EP contains 142-pages of documents submitted by the parties. The Tenant provided 1-page of additional evidence. The Representative provided 20-pages of additional evidence, and a link to a virtual tour of the Rental Unit. The Tenant submitted a 1-page written response to the Representative’s additional evidence.
- [10] On May 14, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Representative, the Tenant, and the Tenant’s witness participated at the hearing.

## Issues to be Decided

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

## Summary of the Evidence

- [11] The Rental Unit is a single-family dwelling (the “Residential Property”).
- [12] On May 1, 2020 the Tenant and former landlord entered into an oral, month-to-month tenancy agreement. The Landlord purchased the Residential Property in April 2022, and the tenancy continued under the same terms and conditions. Rent was \$2,200.00 due on the first day of the month. The Tenant paid a \$2,200.00 security deposit to the former landlord in May 2020. The Landlord received the security deposit from the former landlord in April 2022.

## Landlord's Evidence and Submissions

- [13] The Representative submitted 108 pages of documents into evidence including: A *Landlord Condition Inspection Report (Form 5)*, an inspection report by Paul Davis, and photographs of the Residential Property.
- [14] The Representative was permitted to submit a 20-page appraisal of the Residential Property dated September 30, 2021 as additional evidence. Further, the Representative was permitted to submit a virtual tour (via website link) of the Residential Property from September 23, 2023.
- [15] The Representative stated the Tenant was ordered to vacate the Rental Unit on February 29, 2024 by the Rental Office in Order LD24-049. The Tenant appealed this decision to the Island Regulatory and Appeals Commission (the "Commission"). The Representative stated that on March 11, 2024 he received word from the Commission that the Tenant withdrew the appeal, and the Tenant vacated the Rental Unit on March 12, 2024.
- [16] The Representative stated that the Tenant owes rental arrears from March 1-11, 2024. The Representative stated that the Tenant should have given one-month notice before vacating the Rental Unit. The Representative stated that he is seeking \$2,965.48 in rental arrears (\$72.33 /day x 41 days). The Representative stated that the 41 days represents the one month required notice and the eleven days in March 2024 that the Tenant lived in the Rental Unit.
- [17] The Representative stated that the Tenant has an outstanding appliance repair bill from April 3, 2023. The bill is in the Tenant's name and is collecting 2% interest. The Representative stated that the outstanding amount is \$543.35.
- [18] The Representative stated that an initial inspection of the Rental Unit was completed on March 13-14, 2024. The Representative stated that the Rental Unit was significantly damaged and dirty. The Representative stated Paul Davis completed a detailed inspection on March 19, 2024, which valued the estimate for the repairs at \$19,675.84 (page 34 of the EP).
- [19] The Representative stated that the work has been complete, but not paid. The Representative stated that the floors are the only item that have not been started. The Representative stated that the appraisal report will show "before" photographs of the Residential Property. The Representative stated that the virtual tour will also show the condition of the Rental Unit in September 2023.
- [20] The Representative is a shareholder of the Paul Davis company, however, he stated that the inspection report submitted into evidence used the standard market insurance practices. The Representative stated that if the Tenant disputes the report, the Tenant could submit another inspection report from another company.

## Tenant's Evidence and Submissions

- [21] The Tenant submitted 26 pages of documents into evidence including: a written submission, a witness's written submission, photographs, a written submission from the former landlord, and text messages.
- [22] The Tenant was permitted to submit additional evidence, which included 1 text message photograph and a written response to the Landlord's additional evidence.
- [23] The Tenant stated that she is not disputing owing rent from March 1-11, 2024. However, the Tenant stated that she does not owe rent for an additional month because she was evicted. The Tenant stated that she withdrew her appeal because she found a new place to live.

- [24] The Tenant stated that she disagrees with the enormous cleaning fee, and stated that \$300.00 is more than enough to cover the cleaning of the Rental Unit. The Tenant admitted to leaving the Rental Unit below the standard of ordinarily clean, because she was leaving the Rental Unit in a rush.
- [25] The Tenant stated that the Residential Property is very old and a lot of the damage was pre-existing and normal wear and tear. The Tenant stated that she texted the property manager on numerous occasions regarding the bathroom fan. The Tenant stated that there have been no renovations or repairs to the Rental Unit since the Landlord purchased the Residential Property.
- [26] The Tenant stated that the Landlord never came to the Residential Property, and she never witnessed any inspections and/or realtors at the Residential Property. The Tenant stated that the Paul Davis inspection report may be biased because the Landlord owns the company.
- [27] The Tenant's witness provided oral testimony about the condition and the state of the Rental Unit. The Tenant's witness stated that the Tenant is very clean normally and that the condition of the Rental Unit at the time of vacate was not the normal state of the Rental Unit.
- [28] The Tenant submitted a written submission from the Tenant's partner ("K.G."). K.G. provides numerous rebuttals against the Landlord's position (page 118-120 of the EP). K.G. submitted that the damaged appliance (the stove) and the \$543.35 bill is not in the Tenant's name, rather K.G.'s company's name. Further, K.G. submitted that he helped the Tenant move into the Rental Unit, and the scratches were there under the existing bed before the Landlord purchased the Residential Property. K.G. submitted his company painted the interior of the Rental Unit when the Tenant first moved into the Residential Property. K.G. submitted that the scratches, damage and many of the items left behind such as the fish tank, BBQ and carpenter items were already there.
- [29] The Tenant submitted additional evidence which included a text message with the former landlord. The former landlord confirmed in the text message that the Landlord did not inspect the Rental unit before purchasing it.
- [30] The Tenant submitted a written response to the Landlord's additional evidence. The Tenant submitted that the photographs submitted by the Landlord show the condition of the Rental Unit as being organized and clean, and also shows that two adults and five teenagers lived in the Rental Unit, which resulted in some wear and tear. The Tenant stated that a deep clean was not necessary and is beyond the Tenant's responsibility. The Tenant submitted that the additional evidence submitted by the Landlord does not support the compensation the Landlord seeks in the Application.

## Analysis

- [31] The 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. Further, the Application seeks an order for additional compensation above the total amount 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.*

[32] Further, clauses 39(2), 74(1) and 85(1)(d) of the Act state:

**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.*

**74. Landlord entitled to compensation**

(1) *A landlord is entitled to compensation for a former tenant's use and occupation of the rental unit after the tenancy has been terminated.*

**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.*

[33] The Landlord initiated the Application under the Act. The Landlord bears the onus of proving its claim on a balance of probabilities. This means 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).

[34] The Landlord seeks a monetary order of \$23,184.67. This includes:

- \$2,965.48 in rental arrears (41 days);
- \$543.35 for an outstanding appliance bill; and
- \$19,675.84 for cleaning and repairs to the Rental Unit.

**Rental Arrears in the amount of \$2,965.48**

[35] The Representative stated that the Tenant was lawfully evicted effective February 29, 2024. However, the Tenant appealed the eviction and did not pay rent on March 1, 2024. The Representative stated that the Tenant withdrew the appeal and vacated the Rental Unit without providing the required 1-month notice.

[36] It is undisputed that the Tenant appealed the findings in Order LD24-049, which upheld the eviction notice effective date set for 5:00 p.m. on February 29, 2024. An appeal of a Rental Office order automatically stays the order.<sup>1</sup> However, on March 11, 2024 the Tenant found new living accommodations, withdrew the appeal and promptly vacated the Rental Unit. When the appeal was withdrawn, Order LD24-049 was final and binding on the parties.<sup>2</sup> This means the Tenant was Overholding and was required to compensate the Landlord for the use and occupation of the Rental Unit after the tenancy terminated effective February 29, 2024.

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<sup>1</sup> Section 89.(6) of the Act

<sup>2</sup> Section 83.(2) of the Act

- [37] The Officer finds that the Tenant is responsible for 11 days of rental arrears (March 1-11, 2024), for a total amount of \$780.65 (11 days divided by 31 days multiplied by \$2,200.00). The Tenant did not have to provide the Landlord with one-month notice that she was vacating the Rental Unit because the tenancy was already terminated with the withdrawal of the appeal. This claim is allowed, in part.

### **Appliance bill in the amount of \$543.35**

- [38] The Representative stated that the Tenant has an outstanding appliance repair bill from April 3, 2023. The Representative stated that the bill is in the Tenant's name, and that he only provided the contact information for the repairs.
- [39] K.G. submitted he broke the stove and the bill was to his company, and not the Tenant. K.G. has not paid the bill because of an on-going dispute with the Landlord.
- [40] The Officer notes that the bill in question was not submitted into evidence for review. Despite this fact, the Officer finds that the Landlord has not established a valid reason for retaining \$543.35 from the Tenant's security deposit to pay for an appliance repair bill which is not in the Landlord's name, and possibly not even in the Tenant's name. This claim is denied.

### **Cleaning and repairs in the amount of \$19,675.84**

- [41] The Representative stated that the Rental Unit was damaged beyond normal wear and tear and left in an unclean state. The Representative submitted into evidence a detailed inspection report completed on March 19, 2024 by Paul Davis. The expense breakdown is as follows:
- Acoustical treatments - \$379.05;
  - Cleaning - \$8,526.29;
  - General demolition - \$686.13;
  - Drywall - \$378.22;
  - Floor covering – vinyl - \$2,121.51;
  - Finish carpentry / trim work - \$548.19;
  - Hazardous material remediation - \$457.35;
  - Painting - \$688.75;
  - Window reglazing & repair - \$71.23;
  - Windows – Wood - \$283.21;
  - Overhead - \$1,414.02;
  - Profit - \$1,555.43; and
  - HST - \$2,566.46

### **Cleaning - \$8,526.29**

- [42] The Act requires a tenant to leave the rental unit reasonably clean. The documentary evidence submitted by the Landlord shows that the Rental Unit was left in a condition below what would be considered reasonably clean. Further, the Tenant did not dispute this point, however, the Tenant did dispute the Landlord's cost associated with cleaning. The Representative stated that the cleaning fee includes labour associated with cleaning and completing the repairs.
- [43] The Officer notes that the Residential Property is a large 3-bedroom, 2-full bathroom single family dwelling, with a finished basement and garage. The inspection report submitted by the Landlord details a deep ("heavy") cleaning of the entire Residential Property. The cost associated for "cleaning" was \$8,526.29.

- [44] The Officer agrees with the Tenant's position that the disclosed expense is for cleaning beyond the legislative responsibility of the Tenant. The Officer finds that the photographic evidence submitted shows that the Residential Property is below the standard of reasonably clean. Therefore, the Officer finds that the Landlord is entitled to 10 hours of cleaning at \$30.00 per hour and \$100.00 for cleaning supplies for a total amount of \$400.00. This claim is allowed in part.

### **Repairs – \$11,149.55**

- [45] The Officer finds that the Act requires a tenant to leave the rental unit undamaged except for normal wear and tear. The Representative submitted a breakdown of the costs associated with repairs, renovations and painting for the Residential Property. The Landlord submitted an appraisal, a virtual tour and photographs into evidence to show the condition of the Residential Property at different stages throughout the tenancy.
- [46] The Tenant submitted that the alleged damage was pre-existing. The Tenant stated that she informed to the Landlord's property manager of some issues, but he neglected them. The Tenant submitted there is normal wear and tear in the Rental Unit. K.G. in his submissions referenced witnessing the damage to the floors at the time the Tenant moved into the Rental Unit, underneath one of the beds.
- [47] With regard to the floor damage, the Officer finds that the Landlord has not proven its claim that the floor damage was caused by the Tenant. The Officer finds that the Landlord's evidence, specifically, the virtual tour and appraisal does not show the floors or establish the floors were not damaged at the beginning of the tenancy. This claim is denied.
- [48] With regard to the painting, trim work and drywall repair the Officer finds that the Landlord has established part of its claim. The Landlord's evidence, specifically, the appraisal, virtual tour and the photographs show that there was some damage to the trim, walls, and drywalls which is beyond normal wear and tear. However, the Officer notes that the Commission in Order LR24-06 applied the principle of betterment when taking into account depreciation in determining the amount to be awarded to the Landlord. 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.<sup>3</sup>
- [49] The Officer finds that after four years of a tenancy, with no evidence of renovation, repairs or touchups in painting, the Landlord is entitled to \$1,178.15 for this claim. The Officer breaks down the claim as follows:
- Drywall: \$340.40 (90% of the cost);
  - Trim work: \$493.37 (90% of the cost); and
  - Painting: \$344.38 (50% of the cost).
- Total Amount of Claim: \$1,178.15.
- [50] With regard to the remaining lined items in the report, the Officer finds that the Landlord has not provided sufficient evidence to establish the necessity of the costs and that the Tenant was the cause for these expenses.
- [51] The Officer finds that the acoustic treatment, general demolition, hazardous material, window wood and repair, the overhead and the profit expenses are denied. The Officer finds that the total cost for cleaning and repairs plus HST is \$1,814.87 (\$400.00 + \$1,178.15 + \$236.72 (HST)).

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<sup>3</sup> Order LR24-06 paragraph 24.

## Conclusion

[52] The Application is allowed, in part. The Landlord is entitled to retain the security deposit and interest.

[53] The accrued interest on the \$2,200.00 security deposit is \$96.19, being a total of \$2,296.19.

[54] The Officer's calculations are as followed:

| Item                             | Amount       |
|----------------------------------|--------------|
| Arrears owed for rent            | \$780.65     |
| Cleaning & Repairs               | \$1,814.87   |
| Less security deposit & interest | (\$2,296.19) |
| Amount owed to the Landlord      | \$299.33     |

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

## IT IS THEREFORE ORDERED THAT

- I. The Landlord shall retain the full amount of the security deposit and interest.
- II. The Tenant shall pay the Landlord \$299.33 by June 30, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 4th day of June, 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 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.