

Introduction

- [1] On March 15, 2024, the Landlords filed a *Landlord Application to Determine Dispute (Form 2(B))* (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord Application was filed to claim against the security deposit and for compensation above the security deposit, pursuant to the *Residential Tenancy Act* (the "Act").
- [2] On March 18, 2024, the Tenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the "Tenant Application") with the Rental Office. The Tenant Application was filed to seek a return of rent, a return of the security deposit, and for compensation, pursuant to the Act.
- [3] On May 17, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two Landlords appeared representing the Landlords. The Tenant, a second tenant, and a representative for a third tenant participated in the hearing together to deal with separate applications with the same Landlords and to act as witnesses for each other. The other applications will be determined in separate orders.

Issues to be Decided

- i. Are the Landlords entitled to retain the security deposit or compensation above the security deposit?
- ii. Is the Tenant entitled to a return of rent?
- iii. Is the Tenant entitled to compensation?

Summary of the Evidence

- [4] On January 3, 2024, the parties entered into a written, month-to-month tenancy agreement for the Rental Unit which consisted of a room rental and shared common spaces in a house (the "Residential Property"). Rent was \$550.00 per month and a security deposit of \$550.00 was paid. The Tenant vacated on March 2, 2024.

Landlords' Evidence and Submissions

- [5] The Landlords submitted 34 pages of documents into evidence including messages between the parties, photographs of some common spaces in the property, and a photograph of a room.
- [6] The Landlords stated the Tenant advised the Landlords at the end of January 2024 that he would be vacating by February 29, 2024, but he did not vacate until March 2, 2024. The Landlords stated he provided proper notice but stayed two extra days. They stated they were not able to secure another tenant for March because the Tenant was occupying the room and they are seeking to retain the security deposit for rent owing for March 2024.
- [7] The Landlords stated the Tenant's room and common spaces were not clean when the Tenant vacated. They stated the kitchen, sink, stove, fridge, living room, and toilet were left unclean. They stated it will cost \$500.00 for cleaning the three tenant's rooms and the common areas.
- [8] The Landlords stated there were damages to the common spaces of the Residential Property when the Tenant vacated. They stated the weather seal to the entrance door was broken and will cost \$200.00 to repair. They stated the pneumatic door for the kitchen and hall entrance is broken and will cost \$300.00 to repair. They stated the filter to the dryer is dirty and will cost \$150.00 to clean and repair. Garbage was put into the compost bin and will cost \$50.00 to take to the dump.

- [9] The Landlords stated that the two other tenants participating in the hearing vacated around the same time as the Tenant. They stated the cost for the cleaning and damages should be divided by three, as each tenant was responsible, so the Tenant and other two tenants should each be responsible for \$400.00. They stated there was a fourth tenant living in the Residential Property at the same time as the other three tenants and that individual is still living in the Residential Property.
- [10] The Landlords stated that snow removal was an included service in the tenancy agreement. They stated there was a heavy snowfall in February 2024 which affected everyone across the Province and their snow removal company was delayed because of the volume of snow. They stated when their snow removal company was able to attend the Residential Property the snow was cleared in the driveway. They stated any delay was out of their control.

Tenant's Evidence and Submissions

- [11] The three tenants collectively submitted into evidence: photographs of the Rental Unit, messages between the Landlords and tenants, written submissions, and three videos.
- [12] The Tenant stated he was supposed to vacate on February 29, 2024, but he was unable to move out on that day because of the weather and the Landlords gave him permission to stay until March 1, 2024. He stated on March 1, 2024, he was involved in a motor vehicle collision and was unable to vacate until March 2, 2024. He stated he did not move into the Rental Unit until January 3, 2024, so he should be credited for those extra days he was not living there. He submitted copies of text messages between the Tenant and property manager showing he was given permission to stay until March 1, 2024.
- [13] The Tenant denied that he or the other two tenants participating in the hearing caused any damages. He stated there was a fourth tenant living in the Residential Property as well and that person was dirty and broke items. The Tenant submitted photographs of the Rental Unit and common spaces into evidence from when he vacated.
- [14] The Tenant stated in February 2024 there was a heavy snowfall and the Landlord did not have a snow removal company attend for several days. The tenants were required to shovel the driveway and the Tenant was unable to work. He stated he is seeking \$232.50 in compensation for 15 hours of shoveling at \$15.50 per hour. He stated he is also seeking \$1,000.00 in compensation for lost wages as he could not get his car out of the driveway. The Tenant submitted videos of the tenants shoveling snow into evidence.
- [15] The Tenant stated the Landlords advertised a bigger room than what he was provided. He stated when he arrived to view the room the Landlords stated the room on the advertisement was already rented and offered him a smaller room. He stated he was seeking a return of rent for two months, totaling \$210.00, for being given a smaller room.
- [16] The Tenant stated there was a gap between his door and the door frame and he is seeking \$100.00 in compensation for a lack of privacy. He submitted a photograph of a door into evidence.
- [17] The Tenant stated the Landlords failed to provide laundry services for the first 40 days that he was living in the Rental Unit. He stated he was required to attend a coin laundromat and he is seeking \$30.00 in compensation for the cost of laundry services he incurred.

Post Hearing Evidence and Submissions

- [18] The Officer requested that the Landlords submit a copy of the tenancy agreement and any receipts or invoices after the hearing. On June 3, 2024, the Landlords submitted a copy of a tenant application for one of the other tenants who participated in the hearing. They submitted receipts for 2 pneumatic door closers and a receipt for a weather strip door seal, totaling \$416.21. The Landlords submitted a receipt for cleaning from 8-5 on January 3, 2024, and 8-5 on March 3, 2024, at \$25.00 per hour, totaling \$517.00.
- [19] Copies of the documents were sent to the Tenant and the other two tenants who participated in the hearing for any submissions and were asked to reply by June 5, 2024, at 5:00 pm. On June 6, 2024, one of the other tenants requested the date and time of the receipts for the door closers and door seal and the receipt number and vendor information for the cleaning receipt.
- [20] On June 10, 2024, the Rental Office sent the tenant's questions to the Landlords and the Landlords responded on June 11, 2024. The Landlords stated the receipts are from May 26, 2024, and they provided an email address for the cleaner. The Landlords' response was forwarded to all three tenants. No further submissions were requested or provided by the parties.

Analysis

- [21] The Landlord Application seeks to make a claim against the security deposit and for compensation above the security deposit. The Tenant Application seeks a return of the security deposit, return of rent, and compensation. The parties who initiated each application bears the onus of proving their claims on a balance of probabilities. This means that a decision-maker must be satisfied there is sufficiently clear and convincing evidence to support the claims. 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.*

Issue i: Are the Landlords entitled to retain the security deposit or compensation above the security deposit?**Rent**

- [22] The Landlords stated the Tenant provided proper notice and was going to vacate on February 29, 2024, but he did not vacate until March 2, 2024. The Landlords stated they were unable to re-rent the Rental Unit for March because they could not secure another tenant for the rest of the month and are seeking rent owing for March 2024.
- [23] The parties agreed the Tenant moved into the Rental Unit on January 3, 2024, and paid \$550.00 per month for January and February, and vacated on March 2, 2024. If rent was due on the first day of the month, then the Tenant would be considered overholding for two days in March. However, there was no evidence establishing that the Tenant had been pro-rated any rent for January for the two days he did not occupy the Rental Unit. Therefore, the Officer finds that the two extra days the Tenant paid at the start of the tenancy would cover the two days the Tenant was overholding.
- [24] The Officer further finds that the Landlords have not provided sufficient evidence to establish that they attempted to mitigate their losses by attempting to re-rent the room for March 2023. This claim is denied.

Cleaning and Damages

- [25] The Landlords stated they have incurred \$1,200.00 in expenses for cleaning and repairs and the total should be divided between the Tenant and two other tenants, totaling \$400.00 each. The Landlords submitted one photograph of a bedroom and 11 photographs of the common spaces into evidence which are date stamped March 1, 2024. The photographs of the common spaces depict unclean appliances, dirty and broken dishes, damaged doors, and garbage.
- [26] The Officer finds that the Landlords have not provided sufficient evidence, such as affirmed witness testimony or inspection reports, to establish that the room in the submitted photograph is the Rental Unit or that the Rental Unit was left in a state below the standard of reasonably clean.
- [27] The Officer finds that the Landlords have not provided sufficient evidence, such as affirmed witness testimony or inspection reports, to establish that the Tenant caused the damage to the common spaces or that the Tenant left the common spaces in an unclean state. The photographs are date stamped March 1, 2024, but the Tenant did not vacate until March 2, 2024. The parties agreed that there was a fourth tenant living in the Residential Property at the same time but no submissions were provided by the Landlords establishing why this tenant was not responsible for part of the cleaning or damages.
- [28] The Officer finds that the Landlords have not established they are entitled to retain the security deposit or for compensation above the security deposit. The security deposit plus interest shall be returned to the Tenant.

Issue ii: Is the Tenant entitled to a return of rent?

- [29] The Tenant stated the Landlords advertised a bigger room than what he was provided and he is seeking \$210.00 in return of rent. The Officer notes that the Tenant was under no obligation to enter into a tenancy agreement for the Rental Unit if it was not sufficient. The Officer finds that the evidence establishes that the Tenant viewed the Rental Unit in person and he chose to enter into a tenancy agreement with the Landlords at that time. The Officer finds that the Tenant has not established he is entitled to a return of rent and this claim is denied.

Issue iii: Is the Tenant entitled to compensation?**Snow Removal**

- [30] The Tenant is seeking \$232.50 in compensation for shoveling and \$1,000.00 in compensation for lost wages due to delayed snow removal. The Landlords stated everyone in the Province was having issues with delayed snow removal due to the volume of snow at that time and the driveway was cleared when their snow removal company was available. The Officer finds that the Tenant has not provided sufficient evidence to establish that the Landlords failed to comply with their obligations under the tenancy agreement. This claim is denied.

Door Privacy

- [31] The Tenant is seeking \$100.00 in compensation for lack of privacy as he stated there was a gap between the door and door frame of the Rental Unit. The Tenant submitted a photograph of a door into evidence, however the Officer finds the photograph does not clearly depict a gap or privacy issues and no witness testimony was provided to support this allegation. This claim is denied.

Laundry Machines

- [32] The Tenant is seeking \$30.00 in compensation as he stated the Landlords failed to provide laundry machines for the first 40 days that he was living in the Rental Unit. The Tenant stated he was required to attend a coin laundromat and had to pay approximately \$30.00 himself. The Officer notes that neither party provided copies of the tenancy agreement into evidence to establish if laundry machines were an included service and the Landlords made no submissions regarding this claim. The Officer finds the Tenant has not established he is entitled to compensation. This claim is denied.

Conclusion

- [33] The Landlord Application is denied.
- [34] The Tenant Application is allowed in part.
- [35] The Landlords shall return the security deposit plus interest to the Tenant in the amount of \$555.68 by July 10, 2024.
- [36] This order will be emailed to the parties.

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall return the security deposit plus interest to the Tenant in the amount of \$555.68 by July 10, 2024.

DATED at Charlottetown, Prince Edward Island, this 19th day of June, 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 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.