

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 for outstanding rent, to claim against the security deposit, and for compensation above the security deposit, pursuant to the *Residential Tenancy Act* (the “Act”).
- [2] On April 2, 2024, the Tenant filed a *Tenant Application to Determine Dispute (Form 2A)* (the “Tenant Application”) with the Rental Office. The Tenant Application was filed to seek a return of the security deposit 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. A Tenant Representative (the “Representative”), and two other tenants 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.

Issue to be Decided

- i. Are the Landlords entitled to retain the security deposit and to compensation above the security deposit?

Summary of the Evidence

- [4] On January 2, 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 \$650.00 per month and a security deposit of \$650.00 was paid. The Tenant vacated on February 10, 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’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.
- [7] 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.
- [8] 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.
- [9] The Landlords stated the middle support bar of the bedframe the Tenant was using is broken. They stated it will cost a minimum of \$100.00 to repair and that should be the responsibility of the Tenant.

- [10] The Landlords stated the Tenant did not pay rent in the amount of \$650.00 or the garbage bag fee in the amount of \$5.00, for February 2024. They stated that if the Tenant vacated on February 10, 2024, then the Tenant did not provide proper notice for that month and the end of the tenancy would be February 29, 2024.

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 Representative stated the Tenant notified the Landlords on February 9, 2024, that he would be vacating on February 10, 2024. The Tenant was having financial difficulties and had to return home.
- [13] The Representative denied the Tenant broke the bedframe. He stated the common areas were supposed to be cleaned by someone else and they were never cleaned. He stated the Tenant only used the laundry machines briefly before he vacated because they were purchased after he moved in. He stated the security deposit should be used to cover rent for February 2024.
- [14] The Tenant's witnesses denied that the three tenants caused any damages. The witnesses stated a fourth tenant was also living in the Residential Property and that person remained in the property after they vacated.

Post Hearing Evidence and Submissions

- [15] 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.
- [16] Copies of the documents were sent to the Tenant and 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.
- [17] 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

- [18] 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. 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:

20. Fees charged by landlord

- (2) *A landlord may charge a fee for*
(e) *a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.*

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.*

Are the Landlords entitled to retain the security deposit and to compensation above the security deposit?

Rent

- [19] The Landlords stated the Tenant did not provide proper notice and failed to pay rent in the amount of \$650.00 for February 2024. The Representative agreed that the Tenant failed to pay the rent and that the security deposit could be used for the rent owing. The Officer finds that the Landlords have established the Tenant failed to give proper notice before vacating and the tenancy ended on February 29, 2024. The Officer finds that the Landlords have established they are entitled to retain the security deposit for rent owing for February 2024 in the amount of \$650.00.

Garbage Fee

- [20] The Landlord stated that the Tenant failed to pay the \$5.00 garbage fee for February 2024. Clause 20.2(e) states a landlord may charge a fee for a service requested by a tenant if that service is not required to be provided under the tenancy agreement. The Officer notes that providing proper garbage disposal is a standard included service in most tenancy agreements in PEI and the Officer finds that the Landlords have not established that the \$5.00 garbage fee is an allowed fee in this case. This claim is denied.

Cleaning and Damages

- [21] 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.
- [22] 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.
- [23] 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 bed or that the Tenant left the common spaces in an unclean state. The photographs are date stamped March 1, 2024, however the Tenant vacated on February 10, 2024, and three other tenants were still living there until at least February 29, 2024. The parties agreed that there was a fourth tenant living in the Residential Property at the same time as the three tenants, but no submissions were provided by the Landlords establishing why this tenant was not responsible for part of the cleaning or damages.
- [24] The Officer finds that the Landlords have not established they are entitled to compensation above the security deposit.

Conclusion

- [25] The Tenant Application is denied.
- [26] The Landlord Application is allowed in part.
- [27] The Landlords shall retain the security deposit in the amount of \$650.00.
- [28] The Landlords shall return the interest to the Tenant in the amount of \$6.79 by July 10, 2024.
- [29] This order will be emailed to the parties.

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall retain the security deposit in the amount of \$650.00.
- B. The Landlords shall return the interest to the Tenant in the amount of \$6.79 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.