

Introduction

- [1] On April 15, 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 claim against the security deposit and for compensation above the security deposit, pursuant to the *Residential Tenancy Act* (the "Act").
- [2] On May 28, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Landlord representative (the "Representative") and one 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

- [3] On July 2, 2020, the parties entered into a written, fixed-term tenancy agreement for the Rental Unit for the period of August 1, 2020, to July 31, 2021, which then converted to a month-to-month agreement. Rent was \$1,545.00, plus \$50.00 for parking, due on the first day of the month. A security deposit of \$1,500.00 was paid around August 1, 2020. The Tenants vacated the Rental Unit on March 31, 2024.

Preliminary Matter

- [4] The Tenant stated that only he and one other tenant signed the tenancy agreement but the four individuals named in the Application lived in the Rental Unit. The Tenant stated one of the original tenants left during the tenancy but he was replaced by another tenant, who lived in the Rental Unit until the end of the tenancy. The new tenant paid the old tenant his portion (one-fourth) of the security deposit when the old tenant vacated.
- [5] The Officer notes that only two of the individuals named in the Application are named in the tenancy agreement, and only one of those participated in the hearing. The other individual named in the tenancy agreement did not make any contact with the Rental Office. The other two parties who were named in the Application and were not in the tenancy agreement did not participate in the hearing and did not make any contact with the Rental Office. The Officer finds that there is insufficient evidence to establish if the additional two parties who are named in the Application were tenants, sub-tenants, or occupants. The Officer finds that only the two individuals who were named in the tenancy agreement were tenants and only they will be parties to this Order.

Landlord's Evidence and Submissions

- [6] The Representative submitted several pages of documents into evidence including: a copy of the tenancy agreement, photographs of the Rental Unit, a move out inspection report ("Form 5"), and invoices for cleaning and replacement appliances.
- [7] The Representative stated the property management company she works for took over managing the property in August 2023. She stated there are no move-in inspection reports or move-in photographs available. The Representative stated the Form 5 was signed on March 31, 2024, by the Tenant and it noted that cleaning was required at the Rental Unit, the appliances were functional but dirty, and the stove top was melted. She did not know how old the appliances were.
- [8] The Representative stated there was grease on the appliances, ceiling, walls, and cupboards. She stated other parts of the Rental Unit were also unclean. Degreaser and cleaning were required after the Tenants vacated and the cleaning and cleaning supplies cost \$849.01.

- [9] The Representative stated that although the Form 5 indicated the appliances were functional, not all were safely functional. She stated when the cleaner tried to clean the microwave range it was found that the filter was not cleaned and there was grease up inside the microwave. The cleaner tried to clean the microwave but they were unable to properly clean it because of the amount of grease. The Representative stated the microwave was a potential fire hazard and it could not be left in the Rental Unit. The cost of the microwave replacement was \$575.00.
- [10] The Representative stated one of the burners on the flat top stove was damaged and she tried to get a replacement for the stove top. She was not able to get a replacement top and had to replace the entire stove. She stated that although the burner was in working order, she could not guarantee it was in a safe working order due to the damage. The cost of the stove replacement was \$1,265.00.
- [11] The Representative stated there was ink inside of the drum of the dryer but the Tenants never notified her of the damage. She stated the dryer door was closed during the move out inspection and the damage was not noticed until cleaning was started. She stated the cleaner tried to remove the ink and called two separate cleaning companies for advice, but the ink could not be removed. She stated she could not replace the drum and had to replace the entire dryer. The cost of the dryer replacement was \$977.50.

Tenants' Evidence and Submissions

- [12] The Tenant submitted five videos of the Rental Unit into evidence which showed the condition of the Rental Unit when he vacated. The Tenant stated he was told by the person who did the move out inspection with him that the tenants would be getting the security deposit back.
- [13] The Tenant stated one of the tenants left a pen in their clothes which caused the damage to the dryer and the stove was damaged by cooking. He stated all the appliances still worked when the tenants vacated. He stated the appliances were in already used when tenants moved in and they had lived there for four years. The tenant stated they should not be responsible for the full replacement cost of the appliances.

Analysis

- [14] The Application seeks to make a claim against the security deposit and for compensation above the security deposit. The Representative initiated the Application and bears the onus of proving their claim on a balance of probabilities. This means that the Officer must be satisfied there is sufficiently clear and convincing evidence to support the claims and the value of the alleged damages. 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*

Cleaning

- [15] The Representative is claiming \$849.01 for cleaning and cleaning supplies. She stated there was grease on the appliances, ceiling, walls, and cupboards, and other parts of the Rental Unit were unclean. The Officer finds that the Representative has provided sufficient evidence, specifically the testimony of the Representative, the Form 5, photographs of the Rental Unit, and cleaning invoice, to establish this claim. The Officer also finds that the videos submitted by the Tenants depict unclean surfaces and garbage in the Rental Unit, which corroborates the Representative's testimony. This claim is allowed.

Microwave

- [16] The Representative is claiming \$575.00 for a microwave replacement. The Officer finds that the Representative has not provided sufficient evidence, such as inspection reports or photographs of the microwave, to show the condition of the microwave before the Tenants moved in. The Officer finds that the Representative has not established the damage to the microwave was caused directly by the actions or neglect of the Tenants. This claim is denied.

Stove

- [17] The Representative is claiming \$1,265.00 for a stove replacement. She stated she could not guarantee the stove was in a safe working condition because of the damage to the burner. She stated she was unable to have the stove top repaired and had to purchase a new stove. The Tenant stated the stove was likely damaged by cooking but all the burners were working when they vacated.
- [18] The Officer finds that the Representative has provided sufficient evidence, specifically the testimony of the parties, photograph of the stove, and the Form 5, to establish that the damage to the stove was beyond reasonable wear and tear and caused by the actions or neglect of the Tenants. This claim is allowed.

Dryer

- [19] The Representative is claiming \$977.50 for a dryer replacement due to ink stains inside of the dryer that could not be cleaned. The Tenant stated one of the Tenants left a pen in their clothes which caused the damage. The Officer finds that the Representative has provided sufficient evidence, specifically the testimony of the parties and photographs of the dryer, to establish that the damage to the dryer was beyond reasonable wear and tear and caused by the actions or neglect of the Tenants. This claim is allowed.

Depreciation

- [20] Had the damages not occurred to the stove and dryer, the Landlord could have waited several more years to replace the appliances. The Island Regulatory and Appeals Commission (the "Commission") in Order LR24-06 applied the principle of betterment when taking into account depreciation in determining the amount to be awarded to a landlord for damage caused by a tenant. The Commission noted that a party should not be put in a better position than they would have been had the wrongdoing not occurred.¹

¹ Order LR24-06 paragraph 24.

[21] The evidence establishes that the appliances were older than four years old. No evidence was submitted by the parties, such as a model or serial number, for the Officer to be able to determine the age of the appliances. As each appliance has a life expectancy of approximately 10 years, the Officer awards the Landlord 50% of the replacement costs.

[22] The Officer's calculations are as follows:

Item	Amount
Cleaning	\$849.01
Stove (50%)	\$632.50
Dryer (50%)	\$488.75
Less Security Deposit	(\$1,500.00)
Less Interest (Aug. 1/20 – June 27/24)	(\$64.03)
Total owed to the Landlord	\$406.23

Conclusion

[23] The Application is allowed in part.

[24] The Landlord shall retain the security deposit and interest in the amount of \$1,564.03.

[25] The Tenants shall pay the Landlord \$406.23 by July 31, 2024.

[26] This Order will be served to the parties by email.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall retain the security deposit and interest in the amount of \$1,564.03.

B. The Tenants shall pay the Landlord \$406.23 by July 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 27th 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.