

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 2, 2024 the Landlords filed a *Form 2 (B) Landlord Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed with the Rental Office for the following reason:
- 1) To make claim against the full amount of the security deposit.
- [3] On May 2, 2024 the Landlords emailed the Application to the Tenant.
- [4] On May 10, 2024 the Rental Office mailed and emailed the parties a notice of a teleconference hearing along with a copy of the Application.
- [5] On June 12, 2024 the Rental Office emailed the parties a 163-page evidence package (the “EP”).
- [6] On June 13, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). One of the Landlords (the “Landlord”), the Tenant and a witness for the Tenant (“TW”) participated at the hearing.

ISSUE

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

SUMMARY OF THE EVIDENCE

- [7] The Rental Unit is a three-bedroom and one-bathroom single-family dwelling (the “Residential Property”) owned by the Landlords since March 2021.
- [8] On March 1, 2023 the parties entered into a written, one year fixed-term tenancy agreement. Upon the expiration of the fixed-term, the tenancy continued as a month-to-month agreement. Rent was \$2,200.00 due on the first day of the month. On March 1, 2023 a \$2,200.00 security deposit was paid. The Tenant vacated the Rental Unit on April 27, 2024.

LANDLORDS’ EVIDENCE AND SUBMISSIONS

- [9] The Landlords submitted 125 pages of documents into evidence including: a copy of the tenancy agreement, a *Form 5 Landlord Condition Inspection Report*, emails with TW, written submissions, invoices, receipts, an inspection report dated January 12, 2024, photographs, text messages, a written response to the Tenant’s evidence, and a copy of the property management contract termination notice.
- [10] The Landlord stated that there was significant water damage to the Rental Unit. On January 12, 2024 the Landlord arrived to the Rental Unit to complete an inspection. The Landlord stated that there was a leak in the washroom sink.
- [11] The Landlord stated that the Tenant knew or ought to have known about the leak, and because the Tenant did not inform the Landlord or TW (the property manager at the time), the leak caused significant water damage. The Landlord stated that mould was found in the Rental Unit, and that it takes time for mould to grow. The Landlord stated that the Tenant attempted to paint over some of the mould.
- [12] The Landlord stated that he did another inspection of the Rental Unit after the Tenant vacated. The Landlord stated that he completed all the repairs himself.

- [13] The Landlord stated that the Tenant was not cooperative and refused to give a statement to the insurance adjuster. The Landlord stated that the Tenant knew about the leak for a while and only told the property manager on January 7, 2024.
- [14] The Landlord submitted photographs of the damage caused by the leak. The Landlord stated that a tailpipe in the bathroom sink caused the leak.
- [15] The Landlord stated that he needed to purchase floor material, paint and drywall material, car rental supplies, truck rental, and expense for garbage removal.
- [16] The Landlord submitted that he was not concerned with the minor damage or dust left in the Rental Unit. However, the Landlord submitted that the shed on the Residential Property was full of garbage and dirt.
- [17] The Landlord stated that TW is complicit in these issues, and throughout their professional relationship, TW seemed to always take the Tenant's side.

TENANT'S EVIDENCE AND SUBMISSIONS

- [18] The Tenant submitted 29-pages of documents into evidence including: invoices, written submissions, a copy of the tenancy agreement, and a copy of the *Form 5 Landlord Condition Inspection Report*.
- [19] The Tenant stated that on January 6, 2024 he noticed a major leak coming from the bathroom sink. The Tenant stated that the water dripped to the basement ceiling and onto his tools. The Tenant stated that he shut off the water. The Tenant stated that he dried the areas and used fans.
- [20] The Tenant stated that on January 7, 2024 he informed TW (the former property manager) of the leak. TW arrived to the Rental Unit on January 8, 2024. The Tenant stated that he did not cause the leak and informed TW right away.
- [21] The Tenant stated that he did attempt to paint over the mould. The Tenant stated that the Landlord's understanding of mould is incorrect.
- [22] The Tenant stated that the Rental Unit was left in a clean condition because he hired a professional cleaning company. The Tenant stated that he did not use the shed and all the garbage and items left in the shed were there when he moved into the Residential Property. The Tenant disputed the Landlord's allegations regarding being complicit with TW.
- [23] TW stated that he was the property manager for the duration of the tenancy.
- [24] TW provided corroborating testimony to the Tenant's position. TW stated that there was no evidence to establish the Tenant caused the leak. TW stated that the Tenant informed him right away, and then he contacted the Landlord right away. The Landlord wanted to inspect the Residential Property himself and do the repairs himself.
- [25] TW stated that the shed was not accessible to the Tenant at the start of the tenancy.

ANALYSIS

[26] 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. The relevant law is as follows:

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.

[27] Further, clause 39(2) of the Act states:

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.

[28] The Landlords initiated the Application under the Act. The Landlords bear the onus of proving their claim 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.

[29] For the reasons below, the Officer finds that the Landlords have not established a valid claim for retaining the security deposit.

[30] The Landlords' primary reason for claiming the security deposit is because of water damage caused by a significant leak in the bathroom sink. The Landlord stated that there were some additional costs related to removing garbage and items in the shed on the Residential Property. However, the Landlord did not provide sufficient evidence to establish the items and garbage in the shed belonged to the Tenant.

[31] The undisputed testimony from the parties establishes that the leak was from a loose or broken tailpipe under the bathroom sink, which caused water damage to the ceiling, floors and drywall. Further, mould started to grow on the drywall because of the moisture and water damage.

[32] However, what is in dispute between the parties, is whether or not the Tenant caused the water damage to worsen because the Tenant knew about the leak and did not immediately contact the Landlord or TW.

[33] The Officer finds that the Landlord provided into evidence email conversations with TW. In these emails the Landlord requests TW's opinion regarding the leak and to file the required documents with the Rental Office. It is clear in the emails that TW would do as the Landlord requested, but TW did share his disagreement about the Landlord's belief regarding the leak.

[34] The Officer finds that the Tenant and TW provided corroborating and direct testimony regarding the leak and what happened between January 6 – 8, 2024. The Landlords have not provided sufficient evidence to establish that the credibility of the Tenant and/or TW's testimony should be impugned.

[35] The Officer finds that the Tenant has not caused undue damage to the Rental Unit or failed to inform TW of the leak.

[36] Therefore, the Officer finds that the Landlords have not established a valid claim against the security deposit. The Application is denied and the Landlords shall return the security deposit and interest.

CONCLUSION

[37] The Application is denied. The Landlords shall return the security deposit and interest.

[38] The accrued interest on the \$2,200.00 security deposit is \$71.27, being a total of \$2,271.27.

IT IS THEREFORE ORDERED THAT

1. **The Landlords shall pay the Tenant \$2,271.27 by July 24, 2024.**

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