

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 13, 2024 the Landlord 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 13, 2024 the Landlord emailed the Application to the Tenant.
- [4] On May 23, 2024 the Rental Office emailed and mailed the parties a notice of a teleconference hearing along with a copy of the Application.
- [5] On June 13, 2024 the Rental Office emailed the parties an 89-page evidence package (the “EP”).
- [6] On June 18, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord, the Tenant and legal counsel for the Tenant participated at the hearing.

ISSUE

- i. Is the Landlord entitled to retain the security deposit and interest?

SUMMARY OF EVIDENCE

- [7] The parties entered into a written, fixed-term tenancy agreement for the period of February 1, 2021 to January 31, 2022 and renewed for the period of February 1, 2022 to January 31, 2023. The tenancy agreement continued as a month-to-month. Rent was \$1,212.00 due on the first day of the month. A security deposit of \$1,200.00 was paid at the start of the tenancy. The Tenant vacated the Rental Unit on April 30, 2024.

LANDLORD’S EVIDENCE AND SUBMISSIONS

- [8] The Landlord submitted 78-pages of documents into evidence including: a copy of the tenancy agreements, receipts and invoices, photographs, and text messages.
- [9] The Landlord stated that when the Tenant vacated, the Rental Unit was not in a clean condition. The countertops were damaged and needed to be replaced. The Landlord stated that the countertops were installed in 2019.
- [10] The Landlord stated that the photographs submitted into evidence show the Rental Unit before the tenancy on January 31, 2021 (pages 23-42 of the EP). There are photographs of the Rental Unit after the tenancy on May 1, 2024 (pages 43-74 of the EP).
- [11] The Landlord stated that he hired Merry Maids to provide regular cleaning services which cost \$592.25.
- [12] The Landlord stated that the damage to the countertops required him to replace them at the cost of \$627.89.
- [13] The Landlord responded to the Tenant’s submissions (below) by acknowledging there was a pre-existing crack in the countertops. However, the overall condition of the countertops after the Tenant vacated required the countertops to be replaced.

TENANT'S EVIDENCE AND SUBMISSIONS

- [14] The Tenant submitted 3-pages of documents into evidence including: photographs and a text message.
- [15] The Tenant stated that the Rental Unit does not need to be professionally cleaned. The legislation only requires the Rental Unit to be in a reasonably clean condition. The Tenant stated that he did not cause undue damage to the Rental Unit's countertops. The Tenant stated that there was a pre-existing crack in the countertop when he moved into the Rental Unit. The Tenant stated that the damage to the countertop is water stains and surface scuffs which is reasonable wear and tear.

ANALYSIS

- [16] 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.*

- [17] 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.*

- [18] The Landlord initiated the Application under the Act. The Landlord bears the onus of proving his 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.

- [19] For the reasons below, the Officer finds that the Landlord is entitled to retain \$180.00 from the security deposit.

Cleaning

- [20] The Landlord submitted photographs of the Rental Unit showing its condition before and after the tenancy. This is best practice.
- [21] A tenant is required when vacating a rental unit, to leave it reasonably clean pursuant to clause 39(2)(a) of the Act. The Landlord submitted an invoice from a professional cleaning company and photographs which establish that at the end of the tenancy, the Rental Unit was below a reasonably clean condition.

[22] The Officer finds that the Landlord is entitled to a claim against the security deposit for cleaning. However, the standard of cleaning is reasonable, and not professional. Therefore, the Officer finds that the Landlord is entitled to retain \$180.00 (\$30.00 per hour multiplied by 6 hours) from the security deposit. This claim is allowed, in part.

Damage

[23] The Landlord submitted photographs of the Rental Unit's countertops showing its condition before and after the tenancy. Again, a best practice from a landlord.

[24] The Officer notes that the parties provided undisputed testimony that there was some pre-existing damage to the countertop. The Officer finds that the Tenant cannot be held responsible for this. The Landlord submitted that the damage was beyond the pre-existing damage and beyond normal wear and tear. The Tenant submitted that the damage was more water stains and within the definition of normal wear and tear.

[25] Based on the photographic evidence submitted by the parties, the Officer finds that the Landlord has not established that the Tenant's actions and/or negligence caused such damage which would require the replacement of the countertops. The Officer agrees with the Tenant's submission, based on the photographs, that the described damage is water marks and stains, which would be normal wear and tear over a 3-year tenancy. The claim is denied.

CONCLUSION

[26] The Application is allowed, in part.

[27] The accrued interest on the \$1,200.00 security deposit is \$46.54.

IT IS THEREFORE ORDERED THAT

- I. The Landlord shall retain \$180.00 from the security deposit.
- II. The Landlord shall pay the Tenant \$1,066.54 by July 25, 2024.

DATED at Charlottetown, Prince Edward Island, this 5th 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 (the “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.