

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 15, 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 to retain the Tenant’s security deposit.
- [3] On May 15, 2024 the Landlord emailed the Application to the Tenant.
- [4] On May 29, 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 18, 2024 the Rental Office emailed the parties a 59-page evidence package (the “EP”), along with two recordings.
- [6] On June 25, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord, the Tenant and a witness for the Tenant (“TW”) participated at the hearing.

ISSUE

- i. Is the Landlord entitled to retain a portion of the security deposit?

SUMMARY OF EVIDENCE

- [7] The Rental Unit is a single-family dwelling, purchased by the Landlord in 2020.
- [8] In June 2022 the parties entered into a written, fixed-term tenancy agreement which continued as a month-to-month agreement. Rent was \$1,200.00 due on the first day of the month. On May 28, 2022 a security deposit of \$1,200.00 was paid.
- [9] On May 10, 2024 the Tenant vacated the Rental Unit.

LANDLORD’S EVIDENCE AND SUBMISSIONS

- [10] The Landlord submitted 30-pages of documents into evidence including: estimation for repair, proof of service, “after” photographs, a copy of the Application, “before” photographs, bank statements, and text messages. The Landlord also submitted one video (1:13) into evidence.
- [11] The Landlord stated that he is seeking to retain \$839.50 from the security deposit. The Landlord submitted the cost breakdown as follows:
1. Wooden cabinets repainted: \$180.00;
 2. Broken tile replaced: \$100.00;
 3. Vinyl floor repaired: \$150.00;
 4. Wooden blind replaced: \$250.00;
 5. Cleaning: \$50.00; and HST (15%).
- [12] The Landlord stated that the repairs have not been completed yet, because of delays by the contractors. The Landlord stated that only the cleaning has been complete, and that his in-laws will be moving into the Rental Unit once the work is done.

- [13] The Landlord stated that renovations were done in the Rental Unit before the Tenant moved in. The Landlord stated that the floors, cabinet, and kitchen were all new as of 2022. The Landlord submitted “before” and “after” photographs of the Rental Unit. The Landlord stated that the “before” photographs were from February and May 2022 advertisements. The Landlord stated that the “after” photographs were taken on May 10, 2024.
- [14] The Landlord stated that during the inspection with the contractor, he was advised that the damage to the floor was caused from water inside the Rental Unit. The Landlord believed this damage was caused by the Tenant’s pet. The Landlord did not have a written submission from the contractor regarding the findings during the inspection.
- [15] The Landlord stated that during his inspection on May 10, 2024 he witnessed a tile cracked in the Rental Unit and a bedroom wooden blind which was broken.

TENANT’S EVIDENCE AND SUBMISSIONS

- [16] The Tenant submitted 17-pages of documents into evidence including: a real estate listing in June 2020, photographs, and a written submission. The Tenant also submitted one audio recording (5:05) into evidence.
- [17] The Tenant stated that she disputes the Landlord retaining any portion of the security deposit. The Tenant stated that the Landlord was not present during the initial inspection of the Rental Unit, one of the Landlord’s children was present. The Tenant stated that the Landlord did not complete a move-in inspection report as required by the Act. The Tenant requested double the security deposit for the breach of the Act.
- [18] The Tenant stated that she was the one who informed the Landlord of the water damage to the floor. The Tenant stated that in March 2024 she texted the Landlord about the warped floor caused by a leak from the outside. The Tenant denied that her pets urinated in the Rental Unit.
- [19] The Tenant stated that the crack to the tile was always there. The Tenant stated that the bedroom blind may not be damaged, the photographs only show the blind being lifted on one side. The Tenant stated that she never used the blind. The Tenant stated that the cabinets only need to be painted. The paint is peeling due to moisture, which the Tenant stated she brought to the Landlord’s attention.
- [20] The Tenant stated that she did not clean the Rental Unit before she vacated, but did offer to return to do the cleaning. The Tenant stated that the Landlord did not respond to her cleaning offer.
- [21] TW stated that she was present during the move-in and at that time there was debris and dust all over the Rental Unit. TW stated that the Tenant did not cause the damage alleged by the Landlord.

ANALYSIS

- [22] 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 states:

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.*

[23] 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.*

[24] 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.

THE CLAIMS

1. Wood cabinets repaint in the amount of \$180.00

[25] The Officer finds that the Tenant is not responsible for the cost for repainting the cabinets. Based on the length of the tenancy, and the evidentiary record, the Officer finds that sweating pipes to be the cause for the paint to peel. This is more similar to normal wear and tear than undue damage caused by the actions or neglect of the Tenant. The claim is denied.

2. Broken tile in the amount of \$100.00

[26] The Officer finds that the Tenant is not responsible for the cost for replacing the tile. The Officer notes that the Tenant denied causing the damage to the tile, and that the tile floor was there since 2020 and not renovated in May 2022 (prior to the Tenant moving in). The Officer finds that the Landlord has not provided sufficient evidence to conclude that the tile was broken by the actions or negligence of the Tenant. The claim is denied.

3. Vinyl floor repair in the amount of \$150.00

[27] The Officer finds that the Tenant is not responsible for the cost for repairing the floor. The Officer finds that the Tenant submitted evidence to establish she contacted the Landlord by text message on March 24, 2024 to inform him of the leak.

[28] However, the Officer further finds that the Landlord has not provided sufficient evidence to prove that the Tenant's actions and/or negligence caused the leak or water damage to the floor.

[29] The Officer notes that the Landlord stated that the contractor advised him of the cause of the leak and water damage. However, the Landlord did not have the contractor participate at the hearing to provide oral testimony, and to have the opportunity to be examined and cross-examined. This would have been the best evidence. The Landlord could have even have had the contractor submit a written submission, although less persuasive than oral testimony, it would have carried more weight than the Landlord's hearsay evidence. The claim is denied.

4. Wooden blind replaced in the amount of \$250.00

[30] The Officer finds that the Tenant is not responsible for the cost for replacing the blind. The Officer finds that the Landlord has not provided sufficient evidence to establish that the blind is in fact broken, and/or that the Tenant's actions or negligence caused the alleged malfunction. The claim is denied.

5. Cleaning in the amount of \$50.00

- [31] The Officer finds that the Tenant is responsible for the cost for cleaning. The Officer finds that the Landlord has provided sufficient evidence to find that the Rental Unit was left below the standard of reasonably clean. The claim is allowed, and the Landlord is entitled to retain \$50.00 plus HST for a total amount of \$57.50.

ADDITIONAL COMMENTS**The inspection report**

- [32] The Tenant stated that the Landlord did not comply with the Act. The Tenant stated that the Landlord was required to complete an inspection report at the start and at the end of the tenancy. The Officer notes that clause 109 of the transitional provisions of the Act state:

109. Transitional – start of tenancy condition

Sections 18 and 38 of this Act do not apply to a landlord or tenant in respect of a tenancy that started before the date this Act comes into force.

- [33] The Officer finds that the tenancy started on or around June 10, 2022, and the Act came into force and effect on April 8, 2023. Therefore, the requirements of clauses 18 and 38 do not apply in this case pursuant to clause 109 of the Act.

Double the security deposit

- [34] In the Tenant's written submissions and oral submissions, the Tenant stated that the Landlord did not comply with the Act, and as a result, she is entitled to double the security deposit.
- [35] The Officer notes that awarding a tenant double the security deposit is a remedy provided under clause 40(4) of the Act, which is only triggered when a landlord does not comply with clause 40(1) of the Act. In this case, the Landlord has complied with clause 40(1), with the Application to the Rental Office. Therefore, the Tenant is not entitled to double the security deposit in this case.

CONCLUSION

- [36] The Application is allowed, in part.
- [37] The accrued interest on the \$1,200.00 security deposit is \$44.02, being a total of \$1,244.02.
- [38] The Landlord shall retain \$57.50 from the security deposit.
- [39] The Landlord shall return \$1,186.52 to the Tenant.

IT IS THEREFORE ORDERED THAT

- I. The Landlord shall retain \$57.50 from the security deposit.
- II. The Landlord shall return \$1,186.52 to the Tenant by July 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 8th 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.