

INTRODUCTION

- [1] On April 15, 2024 the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* with the Residential Tenancy Office (the "Rental Office") seeking to retain the Tenant's security deposit (the "Application").
- [2] On April 16, 2024 the Landlord emailed a copy of the Application to the Tenant.
- [3] On April 29, 2024 the Rental Office emailed the parties the Application and notice of a teleconference hearing scheduled for 9:00 a.m. on May 30, 2024.
- [4] On May 23, 2024 the Rental Office emailed the parties an evidence package.
- [5] On May 25, 2024 the Tenant emailed the Rental Office advising that she would not be participating in the scheduled hearing.
- [6] On May 30, 2024 at 9:00 a.m. the Residential Tenancy Officer (the "Officer"), the Landlord and the Landlord's witness (the Landlord's spouse; "LW1") participated in the scheduled teleconference hearing. The Tenant did not join the hearing at 9:00 a.m. The Officer waited until 9:05 a.m. before proceeding with the hearing in the absence of the Tenant. The Landlord's affidavit, sworn or affirmed on February 21, 2024, was added to the record. The Landlord was permitted to submit additional documents after the hearing.

ISSUE

Can the Landlord retain the Tenant's entire security deposit?

SUMMARY OF THE EVIDENCE

- [7] The Landlord's evidence is summarized as follows.
- [8] The Unit is a two-bedroom, 1.5-bathroom unit located in a triplex building that was built in 2022. The Tenant was the first occupant of the Unit.
- [9] The Landlord and the Tenant entered into a written, fixed term tenancy agreement for the period of June 1, 2022 to June 1, 2023. At the end of the fixed term the tenancy continued on a month-to-month basis. A security deposit of \$1,550.04 was paid in installments of \$129.17 from June 1, 2022 to May 1, 2023. Rent in the amount of \$1,596.50 was due on the first day of the month.
- [10] The parties were involved in an earlier eviction dispute which was determined in Order LD24-077. The Tenant was required to vacate the Unit by March 13, 2024.
- [11] The Tenant appealed this earlier decision to the Island Regulatory & Appeals Commission (the "Commission") but withdrew the appeal before the matter was heard. The Landlord believes that the Tenant vacated the Unit on April 1, 2024. On April 2, 2024 the Landlord was advised by the Commission that the Tenant's appeal was withdrawn.
- [12] The Landlord provided the following five grounds for retaining the Tenant's entire security deposit: (1) cleaning; (2) curtain rod; (3) shower rod; (4) wall damage; and (5) legal bill.
- [13] The Unit was unclean when the Tenant vacated and the Landlord incurred a cleaning cost of \$400.00. The cleaner's hourly rate is approximately \$30.00. The new tenants have not made any complaints regarding the cleanliness of the Unit, although they did mention an odour. Schedule "D" of the Tenant's tenancy agreement contained provisions regarding the cleanliness of the Unit at the end of the tenancy.

- [14] The Landlord had to replace the living room curtain rod because it was missing from the Unit after the Tenant vacated. The replacement cost was \$27.59.
- [15] The Landlord had to replace the bathroom shower rod, because it was also missing. The replacement cost was \$21.84.
- [16] LW1 has a red seal in carpentry, owns a construction company, has been involved in the construction industry for 17 years, and has been involved in approximately 100 builds.
- [17] The Landlord and LW1 discovered scratch marks on the main floor living room and kitchen wall that appeared to be caused by fingernails and something hitting the walls. LW1 filled the holes in the walls, obtained the correct paint and applied the paint.
- [18] The new tenants of the Unit later pointed out additional damage to the walls of the stairwell, upstairs hallway and master bedroom. LW1 returned to the Unit and repaired these walls.
- [19] LW1 spent eight hours of work fixing the wall damage. LW1's typical hourly rate is over \$80.00. LW1 charged \$80.00 per hour plus HST for the wall repairs because he completed this work instead of his regular work. The labour cost with HST totaled \$736.00. The materials cost was \$73.51. LW1 completed the work because it was too difficult to find another person to repair the walls.
- [20] The Landlord submitted into evidence a legal bill for preparing an affidavit for the eviction hearing regarding Order LD24-077, in the amount of \$2,364.40. There was no discussion at the earlier hearing of the Tenant being responsible for the legal cost of preparing the Landlord's affidavit. The affidavit was prepared because there were some tenants that were scared of the Tenant. The affidavit was prepared to allow the tenants' evidence to be provided anonymously. The affidavit was only sworn by the Landlord and the tenants' emails were included as exhibits. The Landlord submits that the affidavit was necessary because of the Tenant's earlier conduct.
- [21] The Landlord did not have legal counsel at the eviction hearing. The eviction hearing was the Landlord's first time at a Rental Office eviction hearing and the Landlord's second Rental Office hearing.

ANALYSIS

Cleaning, Curtain Rod & Shower Rod

- [22] Clause 39(2)(a) of the *Residential Tenancy Act* (the "Act") states as follows:

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...

- [23] The evidence presented, particularly the Landlord's photographs, show that the Unit was not in a reasonably clean condition. Although the Tenant was responsible to leave the Unit reasonably clean, the Tenant was not responsible to clean the Unit to a higher standard, such as move-in ready condition for the next tenants.
- [24] Pursuant to section 5 of the *Act*, the Landlord and the Tenant could not set a higher cleanliness standard in the tenancy agreement. In the absence of more detailed evidence from the cleaner regarding the work completed, the evidence presented supports a claim for 75% of the Landlord's cleaning cost to bring the Unit to a reasonably clean condition. Therefore, this claim is allowed in part, in the amount of \$300.00.

- [25] The Officer is also satisfied that the Tenant is responsible for the curtain rod (\$27.59) and shower rod (\$21.84) replacement costs.

Wall Damage

- [26] The Unit was new at the beginning of the tenancy and the Landlord's photographs show the nature of the wall damage. Based upon the evidence presented, the Officer is satisfied that the Tenant is responsible for undue wall damage.
- [27] The materials cost of \$73.51 is allowed.
- [28] It appears to the Officer that the hourly rate of \$80.00 plus HST for wall repairs is excessive in the context of painting work for residential rental units governed by the *Act*. LW1's normal construction rate based upon his experience and qualifications does not appear to the Officer to be the appropriate rate for painting work for undue damage. The Officer reduces this claim to an hourly rate of \$50.00 plus HST. Therefore, the total allowed labour cost is \$460.00 [8 hours multiplied by \$50.00 per hour (\$400.00) plus HST (\$60.00)].
- [29] The total allowed wall damage repair cost is \$533.51 (materials plus labour).

Legal Bill

- [30] Prior to the eviction hearing, the Landlord had an affidavit prepared by a law firm. The Landlord was self-represented at the Rental Office eviction hearing and this security deposit hearing.
- [31] Clause 85(1)(q) of the *Act* states as follows:

*After hearing an application, the Director may make an order
(q) requiring an unsuccessful party to an application to pay costs to a successful party to the application.*

- [32] The references to "application" in this provision indicates that the appropriate time for costs (including legal bills) to be considered would be at the time the application connected to the costs is heard. The Landlord's legal bill is connected to the earlier eviction application which was determined in Order LD24-077. Nevertheless, the Officer has considered the Landlord's legal bill in this decision regarding the security deposit.
- [33] The vast majority of Rental Office hearings involve self-represented parties. Affidavits are relatively uncommon in the documentary evidence.
- [34] At the beginning of Rental Office hearings landlords, tenants and witnesses provide affirmations to tell the truth and provide oral testimony during the hearing. There is no substantive difference between providing oral testimony and providing the same evidence affirmed or sworn in an affidavit. Oral testimony is preferred at Rental Office hearings because the person providing the evidence is available to answer questions.
- [35] The affidavit related to the legal bill was sworn solely by the Landlord. It appears to the Officer that the information contained in the body of the affidavit could have been stated by the Landlord at the hearing as affirmed testimony. The Landlord could have submitted the exhibits in the affidavit to the Rental Office prior to the eviction hearing, without an affidavit. At the hearing the Landlord or the Landlord's witnesses could have explained the source of the documents and their connection to the eviction matter at the earlier hearing.
- [36] It does not appear to the Officer that the affidavit was necessary for the eviction proceeding and therefore the Officer denies the legal bill claim against the security deposit.

- [37] The Officer notes that, when costs are awarded to a successful party, they typically only cover a portion of the entire cost. For context, in a recent Prince Edward Island Court of Appeal decision regarding a Rental Office Order and a Commission Order, the total costs awarded to the successful party was \$2,000.00.¹ The successful party was represented by counsel at the Court of Appeal.

CONCLUSION

- [38] The Application is allowed in part.
- [39] The Landlord's established claims total \$882.94, calculated as follows:

Item	Amount
Cleaning	\$300.00
Curtain Rod	\$27.59
Shower Rod	\$21.84
Wall Damage Repairs	\$533.51
Total	\$882.94

- [40] Due to the Tenant's installment payments of the security deposit, the Officer calculates the security deposit interest on the amount of \$1,550.04 from November 1, 2022 (approximately half way through the payment period). The interest up to July 17, 2024 is \$57.71, with the entire security deposit totaling \$1,607.75.
- [41] The Landlord will retain part of the Tenant's security deposit, in the amount of \$882.94. The Landlord will pay the \$724.81 balance of the security deposit to the Tenant by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Landlord will retain part of the Tenant's security deposit, in the amount of \$882.94.
2. The Landlord will pay the \$724.81 balance of the security deposit to the Tenant by August 6, 2024.

DATED at Charlottetown, Prince Edward Island, this 17th day of July, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
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.

¹ *Pitre & Richards v. Shea & Jinks, Island Regulatory & Appeals Commission*, 2024 PECA 7, paragraph [45].