

INTRODUCTION

- [1] On June 14, 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 Tenants' entire security deposit (the "Application").
- [2] On June 27, 2024 the Rental Office emailed the parties the Application and notice of a teleconference hearing scheduled for 9:00 a.m. on July 18, 2024.
- [3] On July 10, 2024 the Rental Office provided the parties with an evidence package containing a 29-page PDF document and one video (the "Evidence Package").
- [4] On July 18, 2024 the Residential Tenancy Officer (the "Officer"), the Landlord's representative (the "Representative"), one of the Tenants (the "Tenant") and the Tenants' witness ("TW1") participated in the teleconference hearing. The parties confirmed receipt of the Evidence Package. After the hearing the Landlord was permitted to submit an additional video and the Tenants were provided the opportunity to comment on the video.

ISSUE

Can the Landlord retain the Tenants' entire security deposit?

SUMMARY OF THE EVIDENCE

- [5] The Unit is a two-bedroom, two-bathroom unit located in a 98-unit building with an underground garage that the Landlord has operated for approximately two years (the "Residential Property"). The underground garage has one vehicle door.
- [6] The Landlord and the Tenants entered into a first written, fixed term tenancy agreement for the Unit for the period of December 2, 2022 to December 1, 2023. A security deposit of \$1,595.00 was paid on or about October 18, 2022.
- [7] The Landlord and the Tenants entered into a second written, fixed term tenancy agreement for the Unit for the period of December 1, 2023 to November 30, 2024. Rent in the amount of \$1,642.00 was due on the first day of the month plus an additional fee for underground parking.
- [8] The tenancy agreement ended on May 31, 2024.

Landlord's Evidence and Submissions

- [9] The Landlord's evidence is summarized as follows.
- [10] The Representative has been the Landlord's property manager since October of 2023. The Representative works out of New Brunswick and there is a resident manager at the Residential Property.
- [11] On January 1, 2024 the Tenants' vehicle (the "Vehicle") damaged the garage door of the Residential Property. The Landlord submitted into evidence a video of the Vehicle colliding with the door. The collision was caused by the Tenant's delay driving into the garage after the door raised. The Tenant drove through the garage door as it was closing and continued to drive forward after the Vehicle made contact.
- [12] After the collision the Tenant spoke to the Landlord's resident manager, T.A. The Representative stated that the Tenant told T.A. that he was on the telephone and distracted at the time the collision occurred.

- [13] The Landlord submitted into evidence a January 1, 2024 email from T.A. sent after the collision, which states as follows:
- "I received a call from [the Tenant] that said he was on the phone with his dad and he delayed his entry and the garage door came down on his car. I immediately went down and the weather strip is torn off and the bottom panel is buckled. I got it fixed up enough that it will function at a minimum for tonight, I can have a vendor here to fix in the morning. His dad then showed up and asked how to proceed with the damage to [the Tenant's] car as the door had malfunctioned. I know that is not likely the case, and I can have my vendor confirm that fact tomorrow..."*
- [14] T.A. was the Landlord's resident manager until May or June of 2024, at which point another person (M.M.) became the resident manager.
- [15] The Landlord does not have any other videos showing the collision. After the hearing the Representative submitted an additional video showing outside the garage door and the location of the security camera in relation to the door.
- [16] During the time the Representative has worked for the Landlord the Representative is not aware of other incidents where a tenant has driven through the garage door. The Representative has been advised by other people working for the Landlord that there have been some other vehicle damage regarding the garage door on earlier occasions, however, the other tenants admitted responsibility for the damage.
- [17] The Representative submits that, if there had been issues with the garage door sensors, then there would have been multiple daily incidents, which did not occur. The Representative submits that, if any issues with the sensors exist, then they do not pertain to this collision because the door was closing and the Tenant continued to drive through it.
- [18] The total cost of repairing the garage door was \$2,646.35, however, the Landlord is only seeking to retain the Tenants' entire security deposit.

Tenants' Evidence and Submissions

- [19] The Tenants' evidence is summarized as follows.
- [20] The Vehicle is a RAV4. The Tenant was the sole occupant of the Vehicle at the time the garage door and the Vehicle were damaged.
- [21] On the evening of January 1, 2024 the Tenant drove the Vehicle near the entrance of the underground parking garage. The Tenant was using the Vehicle's Bluetooth system connected to his telephone before entering the garage. The Tenant hung up before entering the garage. The Tenant opened up the garage door and the door proceeded to come down on the Tenant's vehicle, as shown in the video. The Tenant denied being distracted at the time the collision occurred.
- [22] The Tenant submits that the garage door was closing at the time of the collision but the garage door's sensors should have detected the Vehicle and raised back up. The Tenant did not see the garage door closing immediately before the collision occurred.
- [23] In order to assess the damage, the Tenant called T.A. and the Tenant's father, TW1, who attended shortly after the collision. T.A. told the Tenant and TW1 that this was not the first time something like this had happened and T.A. pointed to two other vehicles in the garage that had been damaged. T.A. also pointed to two twin sensors and stated that the sensors were too low and were not sensing vehicles coming into the underground parking.

- [24] The Tenant and TW1 have not directly witnessed other vehicles being damaged by the garage door.

ANALYSIS

- [25] For the reasons below, the Officer finds that the Landlord has a valid basis for retaining the Tenants' entire security deposit.

- [26] Subsection 28(4) of the *Residential Tenancy Act* states as follows:

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.

- [27] In the Landlord's January 1, 2024 video, the garage door is fully open for approximately ten seconds before the collision. It appears to the Officer that the Tenant had sufficient time to drive the Vehicle into the garage while the door was fully open, without any risk of damage to the door and the Vehicle.
- [28] The video also shows the garage door closing for approximately three seconds before the Vehicle collides with the garage door. It appears to the Officer that the Tenant could have avoided the collision through observation of the door and stopping the Vehicle. In the context of the garage door already having been fully open for ten seconds, the Officer would have expected the Tenant to be paying close attention to the potential closure of the door.
- [29] The evidence presented does not establish that the sensors caused or contributed to this specific collision. Although the Tenant provided evidence regarding other vehicles being damaged by the garage door, the Officer is not satisfied that these collisions occurred in similar circumstances or at a high frequency that would indicate a problem with the garage door sensors.
- [30] Further, the evidence establishes that T.A. spoke with the Tenant and TW1 about sensor issues immediately after the collision. It appears that this discussion occurred before T.A. had the opportunity to view the security camera footage because T.A. immediately attended the scene of the collision. In T.A.'s later email sent after the collision, T.A. stated that a garage door malfunction "*is not likely the case.*"
- [31] The Officer finds that the Tenants are responsible for undue damage to the garage door that occurred on January 1, 2024, up to the entire security deposit amount of \$1,654.58 (including interest of \$59.58).
- [32] The Officer notes that the evidence does not establish that the Tenant was distracted at the time the collision occurred. However, the Landlord nevertheless has a valid basis for retaining the Tenants' entire security deposit because the Tenant ought to have been able to avoid damaging the garage door.

CONCLUSION

[33] The Application is allowed.

[34] The Landlord will retain the Tenants' entire security deposit.

IT IS THEREFORE ORDERED THAT

1. The Landlord will retain the Tenants' entire security deposit, in the amount of \$1,654.58.

DATED at Charlottetown, Prince Edward Island, this 19th 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.