

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 14, 2024 the Landlord’s representatives (the “Representatives”) 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 and seek compensation exceeding the security deposit amount. The Application was text messaged to the Tenant.
- [3] On June 4, 2024 the Application was emailed to the Tenant.
- [4] On July 2, 2024 the Rental Office emailed the parties notice of a teleconference hearing along with a copy of the Application.
- [5] On July 16, 2024 the Rental Office emailed the parties an evidence package (“EP”).
- [6] On July 23, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Representatives and the Tenant participated at the hearing.

ISSUES

- i. Is the Landlord entitled to retain the security deposit?
- ii. Is the Landlord entitled to compensation exceeding the security deposit?

SUMMARY OF EVIDENCE

- [7] The Rental Unit is an apartment situated in a 12-unit apartment building.
- [8] On May 1, 2022 the parties entered into a written fixed-term tenancy agreement, which converted to a month-to-month agreement. Rent was \$1,436.85 due on the first day of the month. A \$698.00 security deposit was paid on May 1, 2022.

LANDLORD’S EVIDENCE AND SUBMISSIONS

- [9] The Representatives submitted 9-pages of documents into evidence including: photographs, text messages, an invoice and a written submission. The Representatives also submitted 5-pages of documents as additional evidence including: an invoices and receipts.
- [10] The Landlord is seeking \$3,916.85 in total compensation.
- [11] The Representatives stated that on April 22, 2024 the Tenant gave notice he was vacating the Rental Unit on April 30, 2024. The Representative stated that this was insufficient notice and that the Landlord was not able to find new tenants until June 1, 2024. The Representative stated that the Landlord is seeking May 2024 rent in the amount of \$1,436.85.
- [12] The Representatives stated that the Tenant broke the toilet, which was required to be repaired, plus the cost of labour in the amount of \$380.00.
- [13] The Representatives stated that the condition of the Rental Unit after the Tenant vacated was very unclean. The Representatives stated that the cost for cleaning and travel was \$550.00. The Representatives stated that they hired cleaners at \$30.00/hr.
- [14] The Representatives stated that cats were left in the Rental Unit and had to be taken to the PEI Humane Society. The Representatives stated that it cost \$50.00 to have the cats transported.

- [15] The Representatives stated the walls were scuffed and marked, and that the Rental Unit required a full paint job. The Representatives stated that it cost \$550.00 to paint the Rental Unit, and that the Rental Unit was last painted in 2022.
- [16] The Representatives stated that the refrigerator door needed to be replaced at the cost of \$600.00, and the stove door needed to be replaced at the cost of \$250.00. The appliances were purchased in July 2020. The Representatives stated that the Tenant did not return the keys, so a locksmith was hired to replace the Rental Unit's locks, which cost \$100.00.

TENANT'S EVIDENCE AND SUBMISSIONS

- [17] The Tenant did not submit any documents into evidence. However, the Tenant submitted a recorded response via voicemail regarding the Landlord's additional evidence.
- [18] The Tenant stated that he never had an opportunity to gather his remaining personal belongings from the Rental Unit. The Tenant stated that the Rental Unit was not painted before he moved into the Rental Unit. The Tenant stated that he moved into the Rental Unit the next day after the former tenants vacated.
- [19] The Tenant stated that the toilet was broken and that he did plan on repairing it. The Tenant stated that some of the damage to the appliances was there when he moved into the Rental Unit.
- [20] In reference to the additional evidence, the Tenant's evidence is summarized as follows.
- [21] The Tenant questioned the creditability of the invoices and the receipts with the exception of the Home Depot invoice.

ANALYSIS & CONCLUSION

- [22] The Application is made in accordance with section 75 of the Act and seeks to make a claim against the security deposit, pursuant to subsection 40(1) of the Act. Further, the Application seeks an order for additional compensation above the total amount of the security deposit. Section 40(1) of the Act 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, clauses 39(2), 55(2) and 85(1)(d) of the Act state:

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.*

55. Notice for monthly or other periodic tenancy

- (2) A tenant may end a month-to-month or other periodic tenancy by giving the landlord a notice of termination effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice; and
 - (b) is the day before the day that rent is payable under the tenancy agreement.

85. Powers of the Director

- (1) After hearing an application, the Director may make an order
- (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.

[24] The Landlord initiated the Application under the Act. The Landlord bears the onus of proving its claims 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 and the value of the damages.

[25] The Landlord seeks a monetary order of \$3,916.85. This includes:

1. \$1,436.85 for May 2024 rent;
2. \$380.00 for labour and repair to toilet;
3. \$550.00 for cleaning and traveling;
4. \$50.00 for transportation to Humane Society;
5. \$550.00 for painting;
6. \$600.00 for replacing refrigerator door;
7. \$250.00 for replacing stove door; and
8. \$100.00 for replacing locks.

May 2024 rent in the amount of \$1,436.85

[26] The documentary evidence establishes that on April 22, 2024 the Tenant texted the Representatives that he would be vacating the Rental Unit by April 30, 2024 (EP – 11). At the time, the tenancy agreement was a month-to-month agreement, which meant that the Tenant was required to give the Landlord one-months' notice. This meant that on April 22, 2024, the earliest the Tenant could end the tenancy agreement was May 31, 2024. Due to the short notice, the Landlord was not able to re-rent the Rental Unit until June 1, 2024. The Officer finds that the Landlord has proven its claim, and therefore the claim is allowed in the amount of \$1,436.85.

Repair and labour for the toilet in the amount of \$380.00

[27] The parties provided undisputed evidence that the Tenant caused undue damage to the toilet. The Landlord submitted into evidence invoices for the cost of labour and repair for the toilet. The Officer finds that the Landlord has proven its claim, and therefore the claim is allowed in the amount of \$380.00.

Cleaning and traveling in the amount of \$550.00

[28] To begin, the Officer notes that the Landlord did not submit any "before" photographs into evidence to demonstrate the state and/or condition of the Rental Unit prior to the start of the tenancy. The best evidence a landlord can provide for these types of applications is "before" and "after" photographs of a rental unit, accompanied with the inspection reports completed at the beginning and the end of the tenancy.

- [29] In this case, the Representatives submitted some photographs of the Rental Unit at the end of the tenancy. The photographs show the condition of the Rental Unit to be below the standard of reasonably clean.
- [30] Further, the Representatives submitted an invoice in the amount of \$300.00 for cleaning (\$30.00/hr. x 10 hours). Based on the photographic evidence, the Officer finds that five hours of labour is appropriate to charge the Tenant, to bring the Rental Unit to a reasonably clean standard. The claim is allowed in part, in the amount of \$150.00 (\$30.00/hr. x 5 hours).
- [31] The Representatives also submitted an invoice from Hydro Clean Pressure Washing in the amount of \$287.50. This included expenses for 5 dump trips, labour and travel expenses. The Officer finds that the evidence supports this expense and allows the full cost in the amount of \$287.50. Therefore, the claim is allowed in part, in the total amount of \$437.50.

The PEI Humane Society expense in the amount of \$50.00.

- [32] The Representatives stated that it cost \$50.00 to drop the Tenant's two cats off at the PEI Humane Society. The Representative stated that she did not have any documentary evidence of this amount, and based it on time, travel and the labour of putting the two cats in carriers and bringing them to the Humane Society.
- [33] Despite the lack of documentary evidence, the Officer accepts the Representatives' testimony and finds \$50.00 to be a reasonable expense to charge against the Tenant. The claim is allowed in the amount of \$50.00.

Painting in the amount of \$550.00

- [34] The Officer finds that the Landlord did not submit photographs, specifically showing the condition of the walls "before" and "after" the tenancy. The photographs that were submitted into evidence do not demonstrate that the walls were damaged or below a standard of normal wear and tear. The Tenant disputed that the walls were painted at the beginning of the tenancy in 2022. Therefore, the Officer finds that the Landlord has not proven its claim, and therefore it is denied.

Replacement of appliances' doors and locks in the amount of \$950.00

- [35] The Landlord submitted into evidence a photograph of the refrigerator and the stove showing dents in the appliances. The Landlord also submitted an invoice for the expenses for the appliances. The Landlord did not submit an invoice for the lock replacement. The Tenant disputed causing the dents and stated that they were there when he moved into the Rental Unit. The Tenant stated that the keys were left in the Rental Unit.
- [36] The Landlord has not provided sufficient evidence, specifically "before" photographs, to prove that the Tenant caused the damage to the appliances. Therefore, the appliances' claim is denied. However, the Officer allows the expense for changing the locks in the amount of \$100.00.
- [37] The Application is allowed, in part. The Landlord is entitled to retain the security deposit, with interest, and the Landlord is entitled to additional compensation. The Officer's calculations are as followed:

Item	Amount
Rent owed for May 2024	\$1,436.85
Compensation for repairs, cleaning and travelling	\$967.50
Total Compensation	\$2,404.35
Less security deposit & interest	(\$725.45)
Amount owed to the Landlord	\$1,678.90

IT IS THEREFORE ORDERED THAT

- I. **The Landlord shall retain the full amount of the security deposit and interest.**
- II. **The Tenant shall pay the Landlord \$1,678.90 by September 30, 2024.**

DATED at Charlottetown, Prince Edward Island, this 20th day of August, 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.