

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 29, 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 for rent, electricity, cleaning and repairs. On June 4, 2024 the Application was amended to include contact information for the Tenant.
- [3] On June 7, 2024 the Application was emailed and text messaged to the Tenant.
- [4] On June 18, 2024 the Rental Office emailed the parties notice of a teleconference hearing for July 16, 2024 at 9:00 a.m. A copy was mailed to the Landlord.
- [5] On July 11, 2024 the Rental Office made available the evidence package (“EP”) by Titan File.
- [6] On July 16, 2024 at 9:00 a.m. a teleconference hearing was supposed to be held before the Residential Tenancy Officer (the “Officer”). The Landlord and the Tenant did not call into the hearing. The Officer waited ten minutes and then adjourned the hearing.
- [7] It appears that the Landlord attempted to call into the teleconference hearing but there were technical difficulties at the time. It appears that the Tenant believed the hearing was one hour later because of a difference in time zones.
- [8] On July 17, 2024 the Rental Office emailed the parties a new notice of a teleconference hearing for July 30, 2024 at 1:00 p.m. The EP was resent to the parties by email.
- [9] On July 29, 2024 the Tenant contacted the Rental Office regarding issues opening the EP. The Tenant provided a new email address and a new phone number. The EP was sent to the Tenant’s new email address. The Rental Office provided the EP in a variety of methods to the Tenant: the EP was condensed in size, then only the Landlord’s evidence was sent, and then another attempt to send the full EP to the Tenant was made. Included in these emails were the hearing details.
- [10] On July 30, 2024 at 8:18 a.m. the Rental Office emailed the Tenant another full version of the EP and reminded the Tenant of the hearing details, including the time zone difference.
- [11] On July 30, 2024 at 1:00 p.m. a teleconference hearing was held before the Officer. The Landlord participate at the hearing. The Tenant did not call into the hearing at the scheduled time. The hearing was delayed for ten minutes and the Rental Office attempted to contact the Tenant. There was no answer from the new phone number on file. The hearing proceeded in the Tenant’s absence.

ISSUE

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

SUMMARY OF EVIDENCE

- [12] The Rental Unit is a one bedroom and one-bathroom single family dwelling owned by the Landlord.
- [13] On October 1, 2023 the parties entered into a written, month-to-month tenancy agreement. Rent was \$950.00 due on the first day of the month. The Tenant was also responsible for 33% of the electricity costs. A \$950.00 security deposit was paid on October 1, 2023. The Tenant vacated the Rental Unit on May 21, 2024 due to an eviction notice.

LANDLORD'S EVIDENCE AND SUBMISSIONS

- [14] The Landlord submitted 19-pages of documents into evidence including: a copy of the tenancy agreement, a *Form 4 (A) Eviction Notice* dated May 1, 2024, an email to the Rental Office, text messages, proof of service, and receipts for rent.
- [15] The Landlord stated that she served the Tenant with an eviction notice due to non-payment of rent. The Landlord stated that the Tenant vacated the Rental Unit on May 21, 2024. The Landlord stated that the Tenant requested that she use the security deposit for May 2024 rent. The Landlord stated that she informed the Tenant that is not how the security deposit works.
- [16] The Landlord stated that the Tenant has done some work on the Rental Unit for her, which she reduced the rent. The Landlord stated that the Tenant owes \$425.00 for May 2024 rent, and \$161.00 for 1/3rd of the electricity cost for the March-April 2024 month.
- [17] The Landlord stated that the Tenant caused a lot of damage in the Rental Unit. The floors will need to be replaced, however, that work has not been done yet. The Landlord stated that all the wall plates and outlet covers in the Rental Unit needed to be replaced.
- [18] The Landlord stated that the appliances needed to be cleaned. The Landlord stated that there was a lot of mould in the Rental Unit. The Landlord stated that she hired her cleaning person for two hours to clean at \$75.00 total. The Landlord stated that her mother and her cleaned the Rental Unit a few hours each evening for about a week, and she could not put an exact dollar figure on the labour and time.
- [19] The Landlord stated that the total cost of cleaning and repairs is well over \$364.00, however, she is not seeking any additional compensation from the Tenant.

TENANT'S EVIDENCE AND SUBMISSIONS

- [20] The Tenant submitted 13-pages of documents into evidence including an email submission, photographs, a copy of the *Form 4 (A) Eviction Notice*, a google search of the average cost of utilities across Canada, screen shots of Tenant Support Centre information, and copies of Maritime Electric bills.
- [21] The Tenant did not participate at the hearing to provide any oral submissions and/or rebuttals to the Landlord's oral submissions.

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, which 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 19(1) and 55(2) of the Act state:

19. Tenant shall pay rent when due

(1) *A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.*

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 her 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 to retain the security deposit and interest in the amount of \$969.71. This includes:

- 1. \$425.00 for May 2024 rent;
- 2. \$161.00 for 1/3rd the electricity bill for that period of time; and
- 3. \$383.71 for cleaning and repairs to the Rental Unit.

Rent and Electricity

[26] The Officer finds that the evidence establishes that the Tenant was served a *Form 4 (A) Eviction Notice* for non-payment of rent. The Tenant and the Landlord had an agreement that the Tenant would do work in return for a reduction in rent. The Tenant did not pay the outstanding rent when it was due and vacated the Rental Unit pursuant to the eviction notice. Further, the tenancy agreement shows that 1/3rd of the electricity is the responsibility of the Tenant.

[27] The Officer finds that the Tenant owes \$425.00 for May 2024 rent after the work in lieu deduction, and \$161.00 for 1/3rd of the electricity bill from March to April 2024. This claim is allowed.

Cleaning and Repairs

[28] To begin, the Officer notes that the Landlord did not submit any “before” photographs into evidence to demonstrate the state and/or the 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 Landlord provided undisputed testimony regarding the damaged and unclean state of the Rental Unit after the Tenant vacated. The Landlord stated that the labour to clean the Rental Unit and to do the needed repairs cost more than the remaining balance of the security deposit.

[30] After reviewing the photographs, which were submitted by the Tenant, and hearing the Landlord’s undisputed testimony, the Officer finds that there is sufficient evidence to find that the Landlord is entitled to retain \$383.71 from the security deposit for cleaning and repairs. This claim is allowed.

[31] The Application is allowed. The Landlord is entitled to retain the security deposit and interest. The Officer’s calculations are as followed:

Item	Amount
Rent owing for May 2024	\$425.00
1/3 rd Electricity bill (March – April 2024)	\$161.00
Cleaning and Repairs	\$383.71
Total Compensation	\$969.71
Less security deposit & interest	(\$969.71)

IT IS THEREFORE ORDERED THAT

- I. The Landlord shall retain the full amount of the security deposit and interest.

DATED at Charlottetown, Prince Edward Island, this 22nd 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.