

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On August 5, 2024, the Landlord filed an amended *Landlord Application to Determine Dispute* (Form 2(B)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application seeks to retain the Tenant’s security deposit and seeks compensation exceeding the full amount of the security deposit, including rent owed. A copy was emailed to the Tenant on the same date.
- [3] On August 22, 2024, a notice of teleconference hearing was emailed to the parties.
- [4] On September 4, 2024, an evidence package was emailed to the parties.
- [5] On September 10, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The two owners of the Rental Unit (the “Owners”) and a representative of the Owner’s property management company, (the “Representative”), who acts as the Landlord, called into the hearing. The Officer called the Tenant and left a voice mail. After ten minutes the hearing proceeded in the absence of the Tenant.
- [6] The Officer is satisfied that the Tenant was properly served all documents and notified of the hearing. The Rental Office called the Tenant on July 18, August 29, and September 10, 2024, and left a voicemail each time. The Rental Office also emailed the Tenant by using the email address the Tenant provided on the tenancy agreement and which the Tenant used to e-transfer rent to the Landlord.

ISSUES

- i. Does the Tenant owe rent to the Landlord?
- ii. Is the Landlord entitled to compensation?
- iii. Is the Landlord entitled to retain the security deposit?

SUMMARY OF EVIDENCE

- [7] On March 11, 2024, the parties entered into a written month-to-month tenancy agreement for the Rental Unit, which is a cottage. Rent was \$2,000.00 due on the first day of the month. A security deposit of \$500.00 was paid on March 25, 2024. The Tenant vacated the Rental Unit on June 3, 2024, and the tenancy ended.

LANDLORD’S EVIDENCE AND SUBMISSIONS

The Representatives’ evidence is summarized as follows.

- [8] The Tenant did not pay rent for May 2024 in the amount of \$1,000.00 and the Landlord is seeking the rent owed. A copy of the Tenant’s rental ledger was submitted into evidence. The Landlord is not seeking rent owing for June 2024.
- [9] On June 3, 2024, the Representative completed a move-out inspection with a representative of the Tenant. The Representative noted that a window in the master bedroom had been cracked due to a chip on the inside of the window. The Rental Unit was newly constructed before the Tenant moved in and the window was not damaged prior to the Tenant moving in. The cost for the window repair was \$339.90. A copy of the inspection report, repair invoice, and photos of the window were submitted into evidence.

The Owners' evidence is summarized as follows.

- [10] A week after the Tenant vacated the Owners noticed that the lower portion of the bunk bed had been damaged, which was brand new when the Tenant moved in. It was not noted during the inspection as it had been covered up by a blanket. The Owners messaged the Tenant about the damage and she responded by saying that her son was too big for the bed and it had broken. Photographs of the bed and messages between the parties were submitted into evidence.
- [11] The Owners do not live in the area of the Rental Unit so they were required to purchase tools to repair the bunk bed. They purchased \$313.36 in tools but are only seeking half of this expense in the amount of \$156.68. They purchased \$42.20 in materials to repair the bunk bed and are claiming this full amount. Receipts for the tools and materials were submitted into evidence.
- [12] The Owners are seeking \$70.00 in travel expenses for having to drive source the tools and materials, calculated as 100 km at \$0.70/km, which is the 2024 CRA mileage rate. The mileage is for trips from the Rental Unit to hardware stores. The Owners are seeking \$61.17 for 3 hours of travel and labour, calculated as 3 hours x \$20.39/hour, which is the March 2024 Work PEI Labour Rate.

ANALYSIS**Issue i. Does the Tenant owe rent to the Landlord?**

- [13] The Act states:

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.*

- [14] The Officer finds that the Landlord has provided sufficient evidence, specifically the undisputed testimony of the Landlord and the submitted rental ledger, to establish that the Tenant owes the Landlord outstanding rent for May 2024 in the amount of \$1,000.00.

Issue ii. Is Landlord entitled to compensation?

- [15] The relevant law is as follows:

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.*

Window repair expense in the amount of \$339.90 (HST included)

- [16] The Officer notes that the Landlord did not submit any "before" photographs into evidence to demonstrate 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 and/or inspection reports to assist in establishing a baseline of the condition of the Rental Unit from before a tenant moves in.

- [17] However, the Owners provided undisputed testimony that the Rental Unit had been newly constructed before the Tenant moved in and there was no damage to the Rental Unit. The Officer finds that the undisputed testimony of the Owners, the photos, and the details of the repair invoice, provide the Officer with enough evidence to conclude that the damage to the window was beyond reasonable wear and tear. This claim is allowed.

Tool expense in the amount of \$180.18 (HST included)

- [18] The Owners stated they do not live in the area of the Rental Unit and they were required to purchase tools to repair the bunk bed. The Owners stated that they are only claiming half of the expense of the tools. However, the Officer notes that the Owners are retaining the tools and will continue to benefit from the use of the tools in the future.
- [19] The Island Regulatory and Appeals Commission (the "Commission") in Order LR24-06 commented on the principle of betterment. The Commission noted that a party should not be put in a better position than they would have been had the wrongdoing not occurred. The Officer finds that if this claim were allowed, the Owners would be in a better position than before the damage had occurred. This claim is denied.

Bed repair expense in the amount of \$48.53 (HST included)

- [20] As noted above, the Landlord did not submit any "before" photos or inspection reports from the start of the tenancy. However, the Owners provided undisputed testimony that the bunk bed was new when the Tenant moved in and they provided a message from the Tenant stating her son broke the bed.
- [21] The Officer finds that the undisputed testimony and evidence of the Landlord, the photos, and the details of the invoices, provide the Officer with enough evidence to conclude that the damage to the bed was beyond reasonable wear and tear. This claim is allowed.

Travel and labour expense in the amount of \$150.85 (HST included)

- [22] The Owners are claiming 100 km at \$0.70/km for mileage and 3 hours of travel and labour at \$20.39 per hour. The Officer notes that the mileage claimed is roughly the equivalent of two round trips from the Rental Unit to Charlottetown, PE.
- [23] As a part of the mileage and travel expenses include mileage and time for the purchase of the tools, which the Officer has found is not an allowed expense, the Officer will therefore deduct half of the mileage and time. The Officer does find that the Owners were required to travel to purchase the materials to repair the bunk bed, and spent time doing the repairs. The Officer finds that the Landlords are entitled to **\$65.59** for this claim, which is calculated without HST.

Issue iii. Is the Landlord entitled to retain the security deposit?

- [24] As the Officer has found that the Tenant owes rent and compensation to the Landlord above the security deposit, the Officer finds that the Landlord has established that they are entitled to retain the security deposit (\$500.00) plus interest (\$5.41), totaling **\$505.41**.

CONCLUSION

- [25] The Application is allowed in part.
- [26] The Landlord shall retain the security deposit plus interest in the amount of \$505.41.
- [27] The Tenant shall pay the Landlord \$948.61 over and above the security deposit and interest by the timeline below.

[28] The calculations are as follows:

<u>Item</u>	<u>Amount</u>
Rent Owing (May 2024)	\$1,000.00
Window repair	\$339.90
Bed repair	\$48.53
Travel and labour	\$65.59
Less security deposit	(\$500.00)
Less interest (Mar. 25/24 – Sept. 17/24)	(\$5.41)
Total owing to the Landlord	\$948.61

IT IS THEREFORE ORDERED THAT

- I. The Landlord shall retain the security deposit plus interest in the amount of \$505.41.
- II. The Tenant shall pay the Landlord \$948.61 by October 7, 2024.

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

(sgd.) Mitchell King

Mitchell King
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.