

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On August 1, 2024 the Landlords filed a *Form 2 (B) Landlord Application to Determine Dispute* (the “First Application”) with the Residential Tenancy Office (the “Rental Office”). The First Application was filed seeking a monetary order for rent owed and vacant possession of the Rental Unit. The First Application was emailed to the Tenants. The Landlords later withdrew the claim for vacant possession of the Rental Unit.
- [3] On August 9, 2024 the Landlords filed a second *Form 2 (B) Landlord Application to Determine Dispute* (the “Second Application”) with the Rental Office. The Second Application was filed to retain the Tenants’ security deposit. The Second Application was emailed to the Tenants.
- [4] The First Application and the Second Application are collectively referred to as the “Applications”.
- [5] On August 22, 2024 the Rental Office emailed the parties notice of a teleconference hearing, along with a copy of the Applications.
- [6] On September 9, 2024 the Rental Office emailed the parties an evidence package (“EP”).
- [7] On September 12, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlords were represented by one of the Landlords (the “Landlord”). The Tenants did not call into the teleconference hearing at the scheduled time. The hearing was postponed and the Rental Office called the Tenants and left a detailed voice message with the teleconference information. At 9:15 a.m. the hearing proceeded in the Tenants’ absence.
- [8] During the hearing, the Officer permitted the Landlord to submit additional evidence. The Landlords submitted 9-pages of additional evidence which included: photographs, invoices and text messages. The additional evidence was emailed to the Tenants.
- [9] The Officer notes that the Application names four respondents. However, only three of the respondents are included in the tenancy agreement. The fourth respondent was not on the tenancy agreement, however, was described by the Landlord as a roommate. The Tenants confirmed with the Rental Office prior to the hearing that one of the Tenants was to represent all of the named respondents.

ISSUES

- i. Are the Landlords entitled to rent owed?
- ii. Are the Landlords entitled to retain the security deposit?

SUMMARY OF EVIDENCE

- [10] The Rental Unit is one-half of a side-by-side duplex.
- [11] On August 1, 2023 the parties entered into a written, fixed-term tenancy agreement for possession of the Rental Unit. Rent was \$1,800.00 due on the first day of the month. An \$1,800.00 security deposit was paid at the beginning of the tenancy.
- [12] On August 3, 2024 the Tenants vacated the Rental Unit and the tenancy ended.

LANDLORDS’ EVIDENCE AND SUBMISSIONS

- [13] The Landlords submitted 3-pages of documents into evidence: the tenancy agreement. The Landlords also submitted 9-pages of additional evidence.

- [14] The Landlord stated that the Tenants paid the rent by e-Transfer. The Tenants did not pay rent for July 2024. The Landlord stated that he served the Tenants an eviction notice for non-payment of rent, and on August 3, 2024 the Tenants returned the keys and vacated the Rental Unit. The Landlord stated that he is seeking \$1,800.00 for the outstanding rent for July 2024.
- [15] The Landlord inspected the Rental Unit after the Tenants vacated. The Landlord stated that a lot of garbage was left in the Rental Unit. The Landlord stated that he removed the garbage from the Rental Unit and took it to the dump. The Landlord stated that he did not incur any costs at the dump.
- [16] The Landlord stated that the Tenants damaged the kitchen countertop. The Landlord stated that during the tenancy, he went to the Rental Unit to do some painting. This is where he first noticed the damaged countertop. The Landlord stated that he discussed the damage at the time with the Tenants. The Landlord stated that the materials were \$368.17 to repair the kitchen countertop. The Landlord stated that it was \$200.00 for labour.
- [17] The Landlord stated that the Rental Unit's storm door needed to be replaced costing \$250.00 for materials plus \$200.00 for labour.
- [18] The total compensation sought by the Landlord is \$2,818.17.

TENANTS' EVIDENCE AND SUBMISSIONS

- [19] The Tenants submitted 11-pages of documents into evidence. The 11-pages are screenshots of e-Transfer payments to the Landlord, dated from September 2, 2023 to June 2, 2024.
- [20] The Tenants did not participate at the hearing to provide oral submissions or rebuttals of the Landlords' evidence.
- [21] The Tenants did not provide a response to the Landlords' additional evidence.

ANALYSIS

- [22] The Application was filed 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] The Application also seeks a monetary order for rent owed. Clauses 19(1), 39(2) and 85(1)(d) 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.*

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 Landlords commenced the Application pursuant to the Act. The Landlords have the burden of proving their claims by the civil standard of proof, which is on a balance of probabilities. This means that a decision-maker must be satisfied there is sufficiently clear and convincing evidence to support the Landlords' claims.

[25] The Landlords are seeking to retain the full amount of the security deposit plus interest in the total amount of \$1,848.08.

CLAIM**July 2024 rental arrears in the amount of \$1,800.00**

[26] The Officer accepts the Landlords undisputed testimony, and documentary evidence that establishes that the Tenants owe rental arrears for July 2024. The Tenants' documentary evidence included numerous e-transfers, however, the last e-transfer was dated June 2, 2024 in the amount of \$925.00.

[27] Therefore, the Landlords have proven that they have a valid claim for \$1,800.00 to retain the security deposit. The claim is allowed.

Damage to the countertop and storm door in the amount of \$1,018.17

[28] The Landlords submitted additional evidence that shows some damage to the countertop and the storm door. The Landlords also submitted invoices for the materials cost of the countertop in the amount of \$368.17, and the storm door in the amount of \$250.00. The Landlord stated that he did the work himself and it cost \$400.00 in total for his labour.

[29] Based on the undisputed testimony and documentary evidence, the Officer finds that the Landlords have a valid claim for the materials costs, in the total amount of \$618.17. The Officer finds that the Landlord provided sufficient evidence for their incurred expenses to repair/replace the storm door and the countertop. However, the Officer finds that the Landlords have not proven their expenses for labour. Therefore, this claim is allowed in part.

CONCLUSION

[30] The Application is allowed in part. The Officer's calculations are as follows:

Item	Amount
Total compensation for allowed claims	\$2,418.17
Less security deposit & interest	(\$1,848.08)
Amount owed to the Landlords	\$570.09

[31] The Landlords shall retain the full amount of the security deposit plus interest. The Tenants shall pay the Landlords the balance of the claims in the amount of \$570.09 by the timeline below.

IT IS THEREFORE ORDERED THAT

- I. **The Landlords shall retain the full amount of the security deposit and interest.**
- II. **The Tenants shall pay the Landlords \$570.09 by October 10, 2024.**

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