

INTRODUCTION

- [1] On July 18, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant's Application") with the Residential Tenancy Office (the "Rental Office") seeking a monetary order for double the \$200.00 security deposit balance retained by the Landlord, in the total amount of \$400.00 plus interest.
- [2] On July 22 and 23, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for August 15, 2024, along with a copy of the Tenant's Application.
- [3] On August 13, 2024 the Rental Office emailed the parties a 15-page PDF document and one video that was submitted by the Tenant (the "Evidence Package").
- [4] On August 15, 2024 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord's Application") with the Rental Office claiming \$200.00 against the Tenant for cleaning and damage. The Rental Office emailed the Tenant and the Tenant's representative (the "Representative") a copy of the Landlord's Application.
- [5] On August 15, 2024 the Tenant, the Representative, the Tenant's grandmother (the "First Witness"), the Tenant's friend (the "Second Witness"), the Landlord and the Landlord's witness participated in a teleconference hearing before the Residential Tenancy Officer (the "Officer") for determination of the Tenant's Application and the Landlord's Application. At the hearing the parties confirmed receipt of the Evidence Package and the parties agreed that both applications would be determined.

ISSUES

- i. Has the Tenant established a claim against the Landlord for double the security deposit plus interest?
- ii. Has the Landlord established valid cleaning or damage claims against the Tenant?

SUMMARY OF EVIDENCE

- [6] The Landlord has owned the Unit for about 23 years.
- [7] The Landlord and the Tenant entered into a written, fixed term tenancy agreement for the period of October 1, 2023 to October 31, 2024. A security deposit of \$500.00 was paid on October 1, 2023. Rent in the amount of \$1,000.00 was due on the first day of the month.
- [8] On May 8, 2024 the parties entered into a mutual agreement to end the tenancy effective May 31, 2024. The Tenant vacated the Unit in accordance with this agreement.
- [9] On June 10, 2024 the Landlord paid \$300.00 of the security deposit funds to the Tenant.

Landlord's Evidence and Submissions

- [10] The Landlord's evidence is summarized as follows.
- [11] The Tenant made no complaints to the Landlord about the condition of the Unit when the Tenant moved in. There was some pre-existing damage to the flooring but the Landlord is not claiming against the Tenant regarding this damage. The Landlord and the Tenant did not complete a written move-in or move-out inspection report.
- [12] The Landlord is not claiming against the Tenant regarding the Unit's door lock.

- [13] After the Tenant moved out the Landlord spent nine or ten hours cleaning the Unit. It appeared to the Landlord that the Unit's floor had not been cleaned or scrubbed for the eight months the Tenant lived in the Unit. The Tenant put stickers over the bathroom mirror and on the toilet. It took about 45 minutes for the Landlord to remove the stickers from the bathroom. The Landlord had to take the baseboard off the wall to remove all the cat litter that had been by the litter box.
- [14] The Landlord noticed scratches on the cabinet. The Landlord sanded down the cabinet, filled in the cat scratches and repainted the cabinet. This work took about two or three hours. The Landlord stated that the paint cost about \$20.00 from Kent in mid-May but the print on the receipt faded. The Landlord told the Tenant that the Landlord would complete the repair work because the Landlord did not know if the Tenant had the skill and experience to make the repairs. The tenancy agreement states that any damage caused by the cat would be the Tenant's responsibility.
- [15] The Landlord paid a person \$50.00 to dispose of a chair that the Tenant left behind at the Unit.
- [16] The Landlord and the Tenant did not have any previous Rental Office hearings or decisions. The parties did not have an agreement for the Landlord to retain part of the Tenant's security deposit.

Tenant's Evidence and Submissions

- [17] The Tenant's evidence is summarized as follows.
- [18] When the Tenant first moved in the Unit was unclean. The First Witness cleaned the Unit's shower when the Tenant first moved in. There were some scratches on the floor caused by the couches and chairs of the previous tenant.
- [19] The Tenant, the Tenant's grandmother, two case workers and two friends helped the Tenant clean the Unit from top to bottom. The floors, walls and bathtub were scrubbed. The Tenant did not know that there was any cat litter underneath the baseboard. The Tenant was unable to remove the stickers that the Tenant had installed from the bathroom.
- [20] Before the Tenant moved out, the Tenant told the Landlord that her cat had scratched up the cabinet a little bit. The Tenant asked the Landlord for the name of the paint so the Tenant could repair the cabinet. The Tenant wanted to complete the repairs so she would not lose her security deposit. The Landlord told the Tenant not to worry about the paint because the Landlord had some paint under the stairs and the Landlord would complete the repairs herself.
- [21] The Tenant does not dispute the Landlord's \$50.00 claim for disposal of a chair.
- [22] The First Witness's evidence is summarized as follows. When the Tenant first moved into the Unit the First Witness spent about an hour cleaning the shower to remove water marks and stains. The Unit's drawers and cupboards were also unclean at the beginning of the tenancy agreement.
- [23] The First Witness visited the Unit every two or three weeks to help the Tenant clean. At the time the Tenant moved out, the First Witness swept, vacuumed and mopped so the floors were clean.
- [24] The Second Witness's evidence is summarized as follows. The baseboard was missing caulk at the bottom to stop things getting behind it. The Tenant could not have cleaned this area unless the Tenant ripped out the baseboard, which would have caused damage.

ANALYSIS

i. Must the Landlord pay double the security deposit to the Tenant?

- [25] For the reasons below, the Officer finds that the Landlord must pay the Tenant double the security deposit balance plus interest on the security deposit.

- [26] Section 40 of the *Residential Tenancy Act* (the “Act”) addresses the retention and return of a security deposit, stating in part as follows:

(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.

(2) A landlord may retain from a security deposit an amount that

- (a) the Director has previously ordered the tenant to pay to the landlord; and*
(b) remains unpaid at the end of the tenancy.

(3) A landlord may retain an amount from a security deposit if

- (a) at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
(b) after the end of the tenancy, the Director orders that the landlord may retain the amount.

(4) Where a landlord does not comply with this section, the landlord

- (a) shall not make a claim against the security deposit; and*
(b) shall pay the tenant double the amount of the security deposit.

- [27] The evidence establishes that the tenancy agreement ended on May 31, 2024. The Landlord returned \$300.00 of the security deposit within the 15-day deadline. However, the Landlord did not return \$200.00 of the security deposit and did not file an application with the Rental Office to retain the \$200.00 balance within the fifteen-day timeline (by June 17, 2024).

- [28] There are no earlier Rental Office decisions authorizing the Landlord to retain the security deposit. At the end of the tenancy the parties did not come to a written agreement that the Landlord could retain the security deposit. As a result, the Landlord must pay the Tenant double the security deposit plus interest on the security deposit balance in accordance with subsection 40(4), as calculated below.

ii. Has the Landlord established valid cleaning or damage claims?

- [29] For the reasons below, the Officer finds that the Landlord has only established part of the cleaning claim.

- [30] At the hearing, the Landlord withdrew a claim regarding the Unit's door lock.

- [31] The Tenant did not dispute the Landlord's \$50.00 claim for disposal of the Tenant's chair and this amount is deducted from the Tenant's proven claim, as calculated below.

- [32] Clause 39(2)(a) of the *Residential Tenancy Act* (the “Act”) states:

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...*

- [33] The Tenant was responsible to leave the Unit reasonably clean. The Tenant was not responsible to clean the Unit to a higher standard, such as move-in ready condition for the next tenant.

- [34] The Landlord has claimed against the Tenant for nine to ten hours of cleaning work.
- [35] In this case there is insufficient objective evidence (such as photographs or videos) showing the condition of the Unit at the beginning of the tenancy agreement. The parties also did not complete a written move-in inspection report, which is mandatory because of section 18 of the *Act*.
- [36] The Tenant and the First Witness provided evidence putting into question the cleanliness of part of the Unit at the beginning of the tenancy. For these reasons, the baseline cleanliness of the Unit at the beginning of the tenancy is unclear to the Officer.
- [37] There is insufficient objective evidence showing the condition of the Unit at the end of the tenancy and the parties did not complete a written move-out inspection report, which is mandatory because of section 38 of the *Act*.
- [38] In the absence of detailed objective evidence showing the Unit's condition at the beginning and the end of the tenancy, the Officer finds that insufficient evidence has been presented to establish the Landlord's cleaning claim, except for the removal of the bathroom stickers. The Tenant admitted that these stickers were installed by the Tenant and were not removed at the end of the tenancy. The Landlord's evidence was that it took 45 minutes to remove the stickers and the Officer allows a \$20.00 claim for this specific cleaning.
- [39] The Second Witness's evidence puts into question whether the baseboard near the Tenant's cat's litter box was properly maintained. The Officer is not satisfied that a properly maintained baseboard would need to be removed to permit the cleaning of cat litter. As a result, the Officer does not allow a claim regarding the baseboard removal and cleaning.
- [40] With regard to the cabinet repair, subsection 28(4) of the *Act* states:
- 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.*
- [41] The evidence establishes that the Tenant was willing to repair the cabinet or arrange for the repair of the cabinet, which is authorized by subsection 28(4). The Officer notes that any waiver or release of this right in the tenancy agreement was void and of no effect pursuant to section 5 of the *Act*.
- [42] The Landlord did not know whether the Tenant would complete the work to the Landlord's satisfaction and therefore the Landlord decided to complete the work. The Officer is not satisfied that the cabinet repair work was so difficult that the Tenant was unable to repair or arrange for the repair of the cabinet. In the specific circumstances of this case, where the Tenant was willing to complete the cabinet repairs but the Landlord elected to complete the cabinet repairs instead, the Officer denies the Landlord's claim for damage to the cabinet.
- [43] The Officer also notes that this cabinet matter may have been resolved had the parties completed the mandatory written move-out inspection report, as discussed above.

CONCLUSION

- [44] The Tenant's Application is allowed and the Landlord's Application is allowed in part.
- [45] The Tenant has established a valid claim for double the security deposit balance retained by the Landlord plus interest on the security deposit, in the total amount of \$409.39. The Landlord has established a valid claim in the total amount of \$70.00 (chair disposal and sticker removal), which offsets part of the Tenant's claim.

- [46] The Landlord must pay the net amount of \$339.39 to the Tenant by the timeline below, calculated as follows:

Item	Amount
Security Deposit Balance	\$200.00
Interest on \$500.00 (1 OCT 2023 to 9 JUN 2024)	\$8.10
Interest on \$200.00 (10 JUN 2024 to 23 SEP 2024)	\$1.29
Security Deposit Balance (Double Awarded)	\$200.00
Chair Disposal	-\$50.00
Sticker Removal	-\$20.00
Total	\$339.39

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$339.39 by October 15, 2024.

DATED at Charlottetown, Prince Edward Island, this 23rd day of September, 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.