

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On July 15, 2024 the Landlord’s representatives (the “Representatives”) filed a *Form 2 (B) Landlord Application to Determine Dispute* with the Residential Tenancy Office (the “Rental Office”). The application was filed to retain a portion of the Tenants’ security deposit. The application was emailed to one of the Tenants.
- [3] On August 7, 2024 the Representatives amended the application (the “Application”) to include all the Tenants. The Application was emailed to the Tenants.
- [4] On August 12, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for September 10, 2024 at 9:00 a.m., along with a copy of the Application.
- [5] On September 6, 2024 the Rental Office made available the evidence package (“EP”) to the parties via Titan File. The EP included 132-pages of documents, and two videos submitted by the Tenants.
- [6] On September 9, 2024 the Rental Office emailed the parties a new notice of a teleconference hearing scheduled for September 12, 2024 at 11:00 a.m. The Rental Office also contacted the parties by telephone with the updated hearing details.
- [7] On September 12, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Representatives and one of the Tenants (the “Tenant”) participated at the hearing.

ISSUE

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

SUMMARY OF EVIDENCE

- [8] On August 1, 2022 the parties entered into a written, fixed-term tenancy agreement for possession of the Rental Unit. The fixed-term was renewed until July 31, 2024. Rent was \$2,172.00 due on the first day of the month. On August 1, 2022 a \$2,172.00 security deposit was paid.
- [9] On June 30, 2024 the Tenants vacated the Rental Unit and the tenancy ended.

LANDLORD’S EVIDENCE AND SUBMISSIONS

- [10] The Representatives submitted 30-pages of documents into evidence including: a copy of the tenancy agreement, a *Form 5 Landlord Condition Inspection Report*, photographs of the Rental Unit, and an invoice.
- [11] The Representatives stated that the Landlord is seeking to retain \$650.00 from the security deposit. The remaining balance of the security deposit was returned to the Tenants.
- [12] The Representatives stated that the Rental Unit was left in an unclean condition. The Representatives stated that the Rental Unit had a lot of dirt, dog hair, stains, and marks. The Representatives stated that it took two-and-a-half days to clean the Rental Unit.
- [13] Further, there was damage to one of the bedroom walls. The Representatives stated that the condition of the wall was that it looked like the Tenants tried to paint it, but used a different colour and that the wall was not even.

- [14] The Representatives hired Triumph T&N Ltd., who is a handy-man, to clean and repair the Rental Unit. The Representatives stated that it cost \$350.00 to clean the Rental Unit, including labour and materials. It cost \$300.00 to paint the wall including materials.
- [15] The Representatives stated that a \$650.00 invoice for general cleaning and painting is a reasonable price. The Representatives stated that just painting the entire Rental Unit was estimated at \$2,000-\$3,000.00. The Representatives stated that the handy-man hired does not speak fluent English, and that would be the reason for the typos on the invoice.
- [16] The Representatives stated that they gave the Tenants an opportunity to clean and repair the Rental Unit before they vacated.
- [17] The Representatives stated that the Rental Unit was inspected on July 1, 2024 and the photographs submitted into evidence were taken on that date.

TENANTS' EVIDENCE AND SUBMISSIONS

- [18] The Tenants submitted two videos and 92-pages of documents into evidence including: an email submission, a copy of the tenancy agreement, emails between the parties, a copy of the Landlord's photographs, an e-Transfer for the returned balance of the security deposit and interest, the Rental Unit advertisement, and an email submission from one of the other Tenants.
- [19] The Tenant stated that on June 30, 2024 the Rental Unit was cleaned. The Tenant stated that the floors were mopped, vacuumed and all the surfaces were wiped down. The Tenant stated that the condition of the Rental Unit was reasonably clean. The Tenant stated that the \$350.00 cleaning fee is an over-estimate to what was required to clean the Rental Unit.
- [20] The Tenant stated that the bedroom wall may have had some paint damage. The Tenant stated that it needed a touch up. The Tenant stated that they purchased the paint and materials, and that the paint did match the existing paint on the wall. The Tenant stated that the \$300.00 estimate is high to paint one wall.
- [21] The Tenant stated that the invoice submitted into evidence by the Landlord is not itemized and that there are typos. The Tenant stated that they did not feel comfortable agreeing to any amount from their security deposit being retained.
- [22] The two videos submitted into evidence are a recorded video of a walkthrough of the Rental Unit.

ANALYSIS & CONCLUSION

- [23] The Application was filed in accordance with section 75 of the Act, and seeks to make a claim against a portion of the Tenants' 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.*

- [24] The Landlord commenced the Application pursuant to the Act. The Landlord has the burden of proving its claim 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 Landlord's claim.
- [25] The Landlord is seeking to retain a portion of the Tenants' security deposit in the amount of \$650.00.
- [26] The Officer notes that subsection 39(2) of the Act sets out the obligations of the Tenants prior to vacating the Rental Unit, which states:

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.*

CLAIM

Cleaning in the amount of \$350.00

- [27] 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 application are the "before" and the "after" time stamped photographs of the residential rental property. If applicable, the *Form 5 Landlord Condition Inspection Report* should be included from the beginning and end of the tenancy.
- [28] In this case, the Landlord submitted photographs taken at the end of the tenancy. Further, the Landlord submitted an inspection report dated July 1, 2024. The Officer notes that pursuant to section 109 of the Act, the inspection reports at the beginning and the end of the tenancy were not required as the tenancy started prior to the Act coming into force.
- [29] The Tenants submitted two video recordings, which show the Rental Unit's condition at the end of the tenancy. The Officer notes that the video recordings show a reasonably clean Rental Unit, however, the recordings also do not show the same up close details, which the Landlord's photographs show.
- [30] The Landlord submitted photographs of the Rental Unit showing some stains, dog hair and dirt which remained in the Rental Unit. The Officer finds that the photographs show that the Rental Unit was left in a condition below reasonably clean. However, the Officer finds that the invoice submitted into evidence only references \$350.00 for "labour and materials, overall clean, not deep clean".
- [31] Based on the condition of the Rental Unit on July 1, 2024, the Officer finds that 6 hours at \$30.00 an hour would be necessary to bring the Rental Unit into a reasonably clean condition. Therefore, the claim is allowed in part in the amount of \$180.00 + HST for a **total amount of \$207.00**.

Repair & painting in the amount of \$300.00

- [32] Based on the testimony of the parties and the photographic evidence submitted, the Officer finds that the Tenants caused undue damage to the bedroom wall. The Officer accepts the Representatives' testimony that the handyman hired had to sand the wall, apply primer and repaint the wall in the bedroom, which took numerous days to complete. The Officer finds that \$300.00 to sand and paint the wall, with the labour, materials and HST included, is a reasonable cost. **This claim is allowed.**
- [33] The Application is allowed in part. The Landlord is entitled to retain \$507.00 from the security deposit. The Landlord must return \$143.00 to the Tenants forthwith.

IT IS THEREFORE ORDERED THAT

- I. **The Landlord shall retain \$507.00 from the security deposit.**
- II. **The Landlord must return \$143.00 to the Tenants forthwith.**

DATED at Charlottetown, Prince Edward Island, this 23rd 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.