

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On August 15, 2024, the Landlords filed a *Form 2(B) Landlord Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Landlords seek to retain the security deposit and compensation above the security deposit, in the amount of \$12,427.45. The Landlords emailed a copy to the Tenants on the same date.
- [3] On August 29, 2024, a notice of teleconference hearing was emailed and mailed to the parties.
- [4] On September 20, 2024, an evidence package was shared with the parties via TitanFile.
- [5] On September 26, 2024, a teleconference hearing was held before the Residential Tenancy Officer. One of the Landlords (the “Landlord”) and both Tenants participated in the hearing.
- [6] On October 1, 2024, additional evidence was received from both parties. The Landlord submitted videos of the pool from when the Tenants moved in, an email from the Tenants, and a photograph of a bedroom. The Tenants submitted two pool invoices, a response to the Landlords’ evidence, and photographs of the pool.
- [7] The additional evidence was shared with each party with the opportunity to reply by October 3, 2024, with any submissions. The Landlord responded with a submission similar to his testimony and evidence previously provided as well as a copy of the invoice of the completed repairs. The Tenants responded with a submission and agreed to the pool cleaning expense and painting expense. The additional evidence was provided to each party.
- [8] The parties had a previous hearing on April 30, 2024, regarding a dispute over an eviction notice. The parties also had a previous hearing on July 9, 2024, for a determination on the Landlords’ right to complete renovations. During the July 9, 2024, hearing, the parties mutually agreed to terminate the tenancy agreement on August 1, 2024.

ISSUE

Are the Landlords permitted to retain the security deposit and additional compensation?

SUMMARY OF EVIDENCE

- [9] On May 4, 2021, the parties entered into a written fixed-term tenancy agreement for the Unit, for the period of June 1, 2021, to May 31, 2022. The Unit is a single-family house. The tenancy agreement continued as a month to month agreement. Rent was \$2,393.00 due on the first day of the month. A security deposit of \$2,300.00 was paid on June 1, 2021. The Tenants vacated the Unit on August 1, 2024, by mutual agreement, and the tenancy ended.

The Landlords’ evidence is summarized as follows.

- [10] The Tenants vacated on August 1, 2024, and did not pay rent for that day.
- [11] The tenancy agreement states that the Tenants will pay for the opening and closing of the pool and the Landlords provided the Tenants with a pool maintenance guide. The Tenants failed to hire a company to close the pool in the fall of 2023 and closed the pool themselves. A pool company assessed the pool in May 2024 and determined there was damage to the pool because it was not properly closed for the winter. After the Tenants moved out the pool had to be repaired, cleaned, and it required chemicals and salt.

[12] The Landlords had scheduled floor repairs for the week of June 4, 2024, and window repairs beginning June 17, 2024. The Tenants were provided notice for the floor repair on May 31, 2024. The Landlords attempted to work with the Tenants to ensure the repairs would cause minimal disruption. The Tenants refused to allow the Landlords’ contractors to begin the repair work. The Landlords’ contractors charged the Landlords a cancellation fee and the Landlords argue that the Tenants should pay for these expenses. The delay in repairs also delayed the Landlords’ ability to list the Unit for sale and the Landlords argue that the Tenants should pay 1.5 months of the Landlords’ mortgage interest.

[13] After the Tenants moved out the Landlords found additional repairs were required to the Unit including: wall repair and painting in one room, the garage door, a shower door, window screens, pool skimmer cover, a deck light, and a toilet seat. The Tenants left garbage behind which needed to be disposed of with a dumpster. A garage remote had to be replaced. The Tenants changed the locks and did not leave keys, so the locks had to be changed.

[14] The Landlords are claiming the following:

<u>Item</u>	<u>Cost</u>	<u>Item</u>	<u>Cost</u>
August 1 rent	\$79.77	Garbage cleaning	\$80.50
Chlorinator	\$142.36	Lock and screens install	\$115.00
New locks and keys	\$70.98	Screen repair	\$80.16
Garage remote	\$26.44	Wall repair / painting	\$345.00
Pool cleaning	\$362.25	Skimmer cover	\$18.63
Shower door	\$172.50	Pool salt	\$103.40
Garage door	\$287.50	Back deck light	\$40.25
Pool chemicals	\$508.99	Toilet seat	\$34.12
Shower door parts	\$19.32	Toilet / light install	\$115.00
Pool vacuum hose	\$51.73	Delay in selling home	\$1,729.70
Floor repair cancellation	\$7,360.00	Window cancellation	\$460.00
Garbage Bin	\$223.85	Total	\$12,427.45

The Tenants’ evidence is summarized as follows.

[15] The Tenants agree to the following claims of the Landlords:

<u>Item</u>	<u>Cost</u>	<u>Item</u>	<u>Cost</u>
August 1 rent	\$79.77	Garbage cleaning	\$80.50
Chlorinator	\$142.36	Lock and screens install	\$115.00
New locks and keys	\$70.98	Screen repair	\$80.16
Garage remote	\$26.44	Wall repair / painting	\$345.00
Pool cleaning	\$362.25	Skimmer cover	\$18.63
		Total	\$1,321.09

[16] The Tenants dispute the remaining claims of the Landlords:

<u>Item</u>	<u>Cost</u>	<u>Item</u>	<u>Cost</u>
Shower door	\$172.50	Pool salt	\$103.40
Garage door	\$287.50	Back deck light	\$40.25
Pool chemicals	\$508.99	Toilet seat	\$34.12
Shower door parts	\$19.32	Toilet / light install	\$115.00
Pool vacuum hose	\$51.73	Delay in selling home	\$1,729.70
Floor repair cancellation	\$7,360.00	Window cancellation	\$460.00
Garbage Bin	\$223.85	Total	\$11,106.36

- [17] On May 9, 2024, the Tenants emailed the Landlords stating that they agreed to pay for the opening of the pool, which always included the cost of chemicals. The Tenants submit that salt and extra chemicals should not be the Tenants' expense. The pool was always operated with chlorine and not salt for three years without issue. The Tenants were not going to use the pool in 2024 and notified the Landlords they were turning over the pool maintenance to the Landlords.
- [18] The Tenants were concerned about the extensive renovations the Landlords had planned and how this would disrupt their quiet enjoyment of the Unit. The Tenants were only given four days'-notice for the floor repairs and were unable to kennel their dogs that quickly or make new work arrangements. The Tenants did not want strangers in the Unit when their young children came home alone from school. The notice for the window repairs did not have a specific date.
- [19] On June 5, 2024, the Tenants filed an application with the Rental Office to request a determination regarding the Landlords' right to do the proposed renovations. The Tenants wanted to know if the renovations should be allowed or should the Landlord have served an eviction notice for renovations. During the hearing on July 12, 2024, the Tenants agreed to vacate the Unit on August 1, 2024. A determination was not made regarding the Landlords' right to do the renovations.
- [20] The Tenants disputed that the damages to the shower door, pool vacuum hose, garage door, light, and toilet, were caused by the Tenants. The Tenants argue these repairs are typical maintenance of a rental unit. The Tenants agreed they would pay for only one-quarter of the full garbage bin expense as the Landlords also used the bin for their own garbage.

ANALYSIS

Are the Landlords entitled to retain the security deposit and additional compensation?

- [21] The Landlords seek to retain the security deposit and compensation exceeding the security deposit. 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 I must be satisfied there is sufficiently clear and convincing evidence to support the Landlords' claims.

UNDISPUTED CLAIMS

- [22] I find that the following undisputed claims are allowed:

<u>Item</u>	<u>Cost</u>	<u>Item</u>	<u>Cost</u>
August 1 rent	\$79.77	Garbage cleaning	\$80.50
Chlorinator	\$142.36	Lock and screens install	\$115.00
New locks and keys	\$70.98	Screen repair	\$80.16
Garage remote	\$26.44	Wall repair / painting	\$345.00
Pool cleaning	\$362.25	Skimmer cover	\$18.63
		Total	\$1,321.09

DISPUTED CLAIMS

Garbage

- [23] The Tenants agreed to only one quarter of the total garbage bin expense. I find that the Landlords have provided sufficient evidence, specifically the Landlords' photographs, to establish that parts of the Unit and property were not left reasonably clean and at least half of a garbage bin would be required for clean-up. I find that the Landlords are entitled to the full amount of this claim totaling **\$223.85**.

Pool

- [24] The Tenants disputed the Landlords' claims for chemicals and salt. The parties had conflicting evidence as to who was responsible for the ongoing maintenance and cleaning of the pool after it was opened in 2024. The Tenants stated they turned over the maintenance of the pool to the Landlords but the Landlords disputed they agreed to this.
- [25] The tenancy agreement states that the Tenants are responsible for "*paying for the opening and closing the swimming pool from a company approved by the Lessor.*" Although the Landlords may have provided the Tenants with a "*pool maintenance guide,*" and the Tenants previously maintained the pool, there is nothing in the tenancy agreement stating that the Tenants are responsible for the ongoing maintenance of the pool after the spring opening. I find that the Landlords have not established that the Tenants are responsible for the expense of the chemicals or salt. These claims are denied.

Damages/Repairs

- [26] The Tenants disputed the Landlords' claims for the shower door, pool vacuum hose, garage door, light, and toilet. The Landlords stated these items were not damaged when the Tenants moved in.
- [27] Section 39 of the Act states that a tenant shall leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear. I find that the Landlords have not provided sufficient evidence, such as move-in photographs or a move-in inspection report, to establish the base line condition of the Unit for these items. There is insufficient evidence that these damages were caused by any actions or neglect of the Tenants or were beyond reasonable wear and tear. These claims are denied.

Floor and Window Cancellation charges and Mortgage Interest expense

- [28] Clause 85(1)(d) of the Act states that the Director may require a tenant to compensate a landlord for a loss suffered or an expense incurred as a result of a contravention of the Act or the tenancy agreement.
- [29] The Landlords stated that the Tenants restricted the Landlords' access to the Unit for repairs. As a result, the Landlords incurred cancellation and mortgage interest expenses and they are seeking a \$9,549.70 monetary claim against the Tenants.
- [30] The Tenants testified that four days' notice was not sufficient time for them to be able to re-arrange their work schedule, make alternate arrangements for their young children after school, and to make arrangements so their dogs would not interfere with the repair work. They stated there was no specific date for the window repairs.
- [31] Clause 23(a) of the Act states that a landlord shall provide written notice to a tenant "*at least*" 24 hours before the time of entry to carry out a repair or to do work in a rental unit. I note that 24 hours is the minimum amount of time a landlord must provide notice. However, depending on the purpose and extent of the repair work required, a landlord may need to provide more than 24 hours to comply with other provisions in the Act.
- [32] Section 23 cannot be considered in isolation from the rest of the Act. It must be considered in the context of section 22 which states that a tenant is entitled to the quiet enjoyment of a rental unit and reasonable privacy and freedom from unreasonable disturbance.

- [33] The Landlords' evidence establishes that they intended to complete a substantial amount of work in the Unit. The Landlords' invoice states that 2 people were required for four days at 8 hours per day. The final cost for the work totaled \$14,000.00 and included removing and installing 500 sq. ft. of flooring, repairing a water leak, repairing and painting a ceiling, fixing a half wall, and removing garbage. I note that part of the final job included removing and installing flooring in the Tenant's son's former bedroom, which was not a part of the initial repair plan.
- [34] I find that in this case, providing the Tenants with only four days' notice for these extensive repairs was not reasonable. If this substantial repair work had taken place during the Landlords' scheduled timeframe, the repair work would have caused an unreasonable disturbance to the Tenants' quiet enjoyment of the Unit. I find that the four days' written notice was insufficient for the Landlords to remain in compliance with the Tenants' right of quiet enjoyment and freedom from unreasonable disturbance in Section 22.
- [35] Regarding the window replacements, the Landlords emailed the Tenants on June 3, 2024, stating *"we don't have a full schedule of repairs yet. We are replacing two windows in a couple of weeks whenever they come in."* I find that this notice period is vague and it would not be reasonable to expect the Tenants to be ready for this repair work based on the information provided by the Landlords.
- [36] I find that the Landlords have not established that the Tenants have contravened the Act or the tenancy agreement. Therefore, the Landlords are not entitled to the repair cancellation expenses or the mortgage interest expenses and these claims for additional compensation are denied.

CONCLUSION

- [37] The Application is allowed in part.
- [38] I find that the Landlords will retain \$1,544.94 of the security deposit based upon the following claims:

<u>Item</u>	<u>Cost</u>	<u>Item</u>	<u>Cost</u>
August 1 rent	\$79.77	Garbage cleaning	\$80.50
Chlorinator	\$142.36	Lock and screens install	\$115.00
New locks and keys	\$70.98	Screen repair	\$80.16
Garage remote	\$26.44	Wall repair / painting	\$345.00
Pool cleaning	\$362.25	Skimmer cover	\$18.63
Garbage Bin	\$223.85	Total	\$1,544.94

- [39] I find that the remainder of the security deposit (\$755.06) and interest (\$102.87), totaling \$857.93, must be returned to the Tenants by the timeline below.
- [40] The Landlords' claim for additional compensation is denied.

IT IS THEREFORE ORDERED THAT

1. The Landlords will retain \$1,544.94 of the security deposit.
2. The Landlords must return the \$857.93 security deposit balance to the Tenants by November 12, 2024.

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