

INTRODUCTION

- [1] The Landlord seeks rent owing, retention of the Tenant's security deposit and compensation exceeding the security deposit.

DISPOSITION

- [2] I find that the Landlord may keep part of the security deposit for floor damage to the Unit, in the amount of \$366.20. The Landlord's other claims are denied. The Landlord must pay the Tenant the balance of the security deposit plus interest, in the amount of \$1,041.03.

BACKGROUND

- [3] The Unit is a two-bedroom, one-bathroom apartment located in a six-unit building that the Landlord has owned since 2004 or 2005.
- [4] The Landlord and the Tenant entered into two fixed-term tenancy agreements from August 1, 2022 to August 30, 2024. The Tenant moved into the Unit a few days early. A security deposit of \$1,345.00 was paid on July 11, 2022. Rent in the amount of \$1,400.00 was due on the first day of the month.
- [5] The tenancy agreement ended on July 31, 2024.
- [6] On August 14, 2024 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking rent owing, retention of the Tenant's security deposit and compensation exceeding the security deposit.
- [7] On October 7, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for October 31, 2024, along with a copy of the Application.
- [8] On October 23, 2024 the Rental Office emailed the parties a 62-page PDF evidence package (the "Evidence Package"). On October 28 and 29, 2024 the Rental Office emailed the parties two supplementary evidence packages.
- [9] On October 31, 2024 the Landlord, the Landlord's interpreter, the Landlord's witness ("LW1"), the Tenant and the Tenant's two witnesses participated in a teleconference hearing. The parties confirmed receipt of the Evidence Package and the two supplementary evidence packages. The parties also confirmed that these were all of the documents submitted to the Rental Office.
- [10] On November 1, 2024 the hearing continued with the Landlord, the Landlord's interpreter, the Tenant and the Tenant's two witnesses. The parties submitted additional evidence after the hearing.

ANALYSIS

- [11] The Landlord has the burden of proof to establish the claims against the Tenant on a balance of probabilities.

Rent Owing

- [12] The Landlord claims against the Tenant for January 2024 rent, in the amount of \$1,400.00.
- [13] The Landlord was away from Canada at the beginning of January 2024. The Landlord did not receive the Tenant's January 2024 rent payment at the beginning of the month. The Landlord emailed the Tenant requesting that rent be paid.

- [14] The Landlord's email account was hacked without the Landlord's knowledge sometime around January 1 to 5, 2024. A fraudster responded to the Landlord's rent request from a fake email account impersonating the Tenant. The fraudster requested that the Tenant's January rent be paid in February. The fraudster also deleted some emails to conceal that the Landlord's email account had been hacked.
- [15] The fraudster redirected e-Transfers from the Landlord's bank account to another account, including the Tenant's January rent payment.
- [16] The Landlord returned to Canada. Around January 24, 2024 the Landlord discovered that her email account was hacked because a friend sent the Landlord an e-Transfer but this payment never arrived in the Landlord's bank account. Another tenant also sent the Landlord an e-Transfer rent payment which the Landlord never received. The friend and the other tenant reported the e-Transfers to the police and also paid the Landlord again. None of the stolen funds were recovered as of the hearing date.
- [17] The Landlord argues that the Tenant should have discovered that his January 2024 rent e-Transfer was not being sent to the Landlord. The Tenant's e-Transfer confirmation for the rent payment had different recipient names and not the Landlord's name. The Landlord argues that it was the Tenant's responsibility to ensure that the Landlord's e-Transfer information was correct at the time of sending the payment.
- [18] The Tenant disputes the Landlord's rent owing claim. The Tenant's normal method of paying rent was sending e-Transfers to the Landlord's email address that is stated in the tenancy agreement. On January 5, 2024 the Tenant e-Transferred January 2024's rent to the Landlord's email address. The Tenant did not notice a different recipient name when the e-Transfer was sent. On January 25, 2024 the Landlord called the Tenant to advise that she had not received the Tenant's January 2024 rent payment. The Landlord also told the Tenant that her account had possibly been hacked.
- [19] On February 1, 2024 the Landlord asked the Tenant to open a case with the bank. The Tenant called the bank the same day but the bank refused to open a case for the Tenant because it was the Landlord's account that had been hacked, 25 days had passed since the e-Transfer was sent, and the e-Transfer had been sent to the correct email address.
- [20] I find that the Tenant did in fact pay January 2024 rent on January 5, 2024 by sending an e-Transfer to the Landlord's email address. This was the normal method of making rent payments. It was the Landlord's email account that was compromised which caused the funds to be stolen. It was not the Tenant's responsibility to uncover fraud in the Landlord's rent payment system. I note that the Landlord did not discover this fraud for approximately twenty days and the fraud was not apparent to two other people sending e-Transfers to the Landlord.
- [21] The Landlord's rent owing claim is denied.

Garbage Disposal

- [22] The Landlord seeks \$40.00 for disposing of the Tenant's garbage at the end of the tenancy. The Tenant's garbage bin was completely full on July 30, 2024, the date garbage was scheduled for collection, but the Tenant did not move the bin to the sidewalk for collection.
- [23] LW1 looked inside the Tenant's black and green bins and they had not been properly sorted. LW1 stated that the Tenant was provided with an option to lock the bins to avoid access by the public.
- [24] On July 31, 2024 the Tenant text messaged LW1 stating that he would take two garbage bins and two brooms but the Tenant never removed these items.

- [25] On August 14, 2024 LW1 used his truck to deliver the Tenant's black and green bins to the Island Waste Management Corporation ("IWMC") site in Charlottetown. LW1 waited at the IWMC site for about 45 minutes for the bins to be unloaded. The Landlord submitted into evidence an IWMC receipt for \$9.00. The tenancy agreement states that there is a \$40.00 bin sorting fee.
- [26] The Tenant disputes this \$40.00 claim because the Tenant disposed of his waste in the allocated bins and his recycling was left outside. The Tenant stated that there was one day's worth of cooking waste in the green bin at the end of the tenancy.
- [27] The Tenant stated that members of the public have access to the Unit's bins. The Tenant denied that the Landlord provided an option for locking the bins.
- [28] The parties provided conflicting testimony regarding the proper sorting of the bins and there is insufficient objective evidence regarding whether the bins were properly sorted. Further, it is unclear whether any improper sorting was due to the Tenant or members of the public accessing the Unit's bins. I find that there is insufficient evidence to support the Landlord's claim.
- [29] The Landlord's position is that the Tenant did not take the black bin to the sidewalk on the collection day of Tuesday, July 30, 2024. If the sole issue was the black bin being moved to the sidewalk, then the Landlord could have moved the black bin to the sidewalk for the next IWMC pickup on Tuesday, August 13, 2024.

Oven Cleaning

- [30] The Landlord seeks \$100.00 for cleaning the Unit's oven because the Tenant left it dirty with hard crusts. LW1 soaked the oven twice with cleaning materials, which took about 90 minutes. The Landlord submitted into evidence a photograph of the oven taken around the end of the tenancy. The oven is six or seven years old.
- [31] The Landlord's standard is to make sure ovens are cleaned before the tenancy agreement commences. The Landlord submitted into evidence a document dated July 25, 2022 (the "Report") signed by the parties which states in part:
- "...Also, you have identified the unit as not having been cleaned and further agree to waive the landlord's pre-tenant apt. cleaning requirement to facilitate your early "move- in" schedule... It must be stated that you will be responsible for the cleaning of this unit and the removal of all furnishing's/kitchenware etc. at the time of your own departure..."*
- [32] LW1 stated that he cannot ask a tenant to clean an oven unless it is clean at the beginning of the tenancy.
- [33] The Tenant disputes the cleaning fee because the oven was filthy at the beginning of the tenancy. The Tenant barely used the oven during the tenancy because he used an air fryer instead. The Tenant stated that the oven is much older than six or seven years.
- [34] Clause 39(2)(a) of the Act provides the following rules regarding the condition of a rental unit at the end of a tenancy:

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...

- [35] The parties did not submit objective evidence (such as photographs) showing the condition of the oven at the beginning of the tenancy. The Report indicates that the Unit was not fully clean at the beginning of the tenancy. The Tenant's evidence was that he barely used the oven during the tenancy.
- [36] I find that the Landlord's \$100.00 cleaning claim is denied because the baseline condition of the oven is unknown. The Tenant's direct evidence was that the oven was barely used during the tenancy. Further, the Tenant was not responsible to bring the Unit to a higher level of cleanliness compared to the beginning of the tenancy. This cleaning claim is denied.

Damage

- [37] The Landlord claims \$2,441.35 for damage to the kitchen's linoleum floor. The Landlord stated that the floor is six or seven years old but it was in perfect condition at the beginning of the tenancy. The Landlord provided a photograph taken in June or July of 2022 showing part of the floor in an undamaged state. The Landlord provided a photograph taken on July 31, 2024 showing the same part of the floor in a damaged state with burn marks. The Report provides details of damage to other parts of the Unit but does not note any damage to the floors.
- [38] The Landlord had a friend willing to change the floors for \$800.00 cash but the friend was unwilling to provide an invoice. The Landlord also obtained an estimate of \$2,441.35 from a floor repair company for a similar, mid-priced product. The floor repair company told LW1 that they did not have the same flooring material available that is in the Unit. The Landlord does not have an estimate of the floor's life expectancy.
- [39] The Landlord re-rented the Unit without floor repairs being completed. The Landlord is waiting for the results of this decision before making the repairs. The Landlord has the Residential Property listed for sale. The Landlord does not know whether floor repairs would be completed before the Residential Property is sold.
- [40] The Tenant stated that there was damage to other parts of the floor at the beginning of the tenancy and the Landlord already was planning on replacing the floor. The Tenant brought a carpet into the Unit that covered the kitchen floor during the tenancy. The Tenant had the carpet removed around July 29, 2024. The Tenant did not see damage to the floor when he moved out. The Tenant does not know what caused the burn damage.
- [41] The floor was not in perfect condition when the Tenant moved in and there were other parts of the floor that were damaged. After the hearing the Tenant provided a video and two photographs showing a different part of the floor. During the tenancy LW1 visited the Unit and told the Tenant that the floor would be replaced after he moved out. The Tenant questioned why the Landlord first claimed \$800.00 for the floor damage and later claimed a higher amount.
- [42] Subsections 28(4) and (5) of the Act address a tenant's responsibility for damage to a residential property, stating as follows:
- (4) *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.*
- (5) *A tenant is not required to make repairs for reasonable wear and tear to the rental unit or common areas of the residential property.*
- [43] I have reviewed the evidence of the parties. The objective evidence shows the Unit's kitchen floor without burn marks before the tenancy commenced and with burn marks as of July 31, 2024, the date the tenancy ended.

- [44] Further, the Report completed at the beginning of the tenancy identifies damage to other parts of the Unit but does not identify any damage to the kitchen floor. Based upon the evidence presented, I find that the burn damage to the kitchen floor occurred during the tenancy by the Tenant or a person permitted in the Unit by the Tenant and this is undue damage beyond reasonable wear and tear.
- [45] The Landlord seeks the entire floor replacement cost of \$2,441.35. Based upon the evidence presented, I am satisfied that this is a quote from a professional company for a comparable floor product. However, the evidence presented does not support a claim for the entire replacement cost for the following reasons.
- [46] The kitchen floor was not new at the beginning of the tenancy, being at least six or seven years old. The Tenant provided evidence that the floor was not in perfect condition at the time he moved in. The burn marks cover a relatively small portion of the floor. The Landlord re-rented the Unit without completing the repairs. The Landlord has the Residential Property listed for sale and the floor repairs may not occur depending on when a sale is completed. For these reasons I find that only 15% of the replacement cost is appropriate, in the amount of \$366.20.
- [47] I note that Island Regulatory and Appeals Commission (the "Commission") Order LR24-06 determined a dispute regarding damage to a floor. In this Commission decision the tenants admitted that the floors were new at the beginning of the tenancy and the landlords had in fact replaced the rental unit's floor after the tenants moved out. The nature of the floor damage may also have been different in this Commission decision.

Sofa & Dining Table Disposal

- [48] The Landlord claims \$150.00 for disposing of a sofa and a dining table belonging to the Tenant that were left behind at the Unit. LW1 and another person took these items to Habitat for Humanity.
- [49] The Tenant disputes this claim because he asked LW1 if the new tenants of the Unit wanted the sofa and dining table. The Tenant received text messages from LW1 and the Landlord permitting him to leave the items in the Unit for the new tenants.
- [50] The Tenant later received a text message from the Landlord requesting that the Tenant remove the items from the Unit because the new tenants did not want these items. By this time the Tenant had already returned his U-Haul moving vehicle.
- [51] I find that this claim against the security deposit is denied. The Landlord agreed that the Tenant could leave these items at the Unit. The Landlord cannot now make a valid disposal claim for these items.

CONCLUSION

- [52] The Application is allowed in part.
- [53] I find that the Landlord will keep \$366.20 of the security deposit for damage to the kitchen floor. The Landlord's other claims are denied.
- [54] The Landlord must pay the Tenant the balance of the security deposit plus interest, in the amount of \$1,041.03 (\$1,345.00 security plus \$62.23 interest minus \$366.20 damage), by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Landlord will keep \$366.20 of the Tenant's security deposit.
2. The Landlord must pay the Tenant the security deposit balance plus interest, in the amount of \$1,041.03, by January 13, 2025.

DATED at Charlottetown, Prince Edward Island, this 11th day of December, 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.