

INTRODUCTION

- [1] The Landlord seeks to retain the Tenants' security deposit plus interest in the amount of \$2,076.81 for compensation to repair undue damage and to clean the Unit.
- [2] The Landlord also seeks compensation exceeding the security deposit amount for pro-rated rental arrears for October of 2024, in the amount of \$1,500.00.

DISPOSITION

- [3] I find that the Landlord is entitled to retain the Tenants' security deposit and interest in the amount of \$2,076.81.
- [4] I find that the Landlord is not entitled to compensation exceeding the security deposit amount.

BACKGROUND

- [5] The Unit is a single-family townhouse (the "Residential Property") owned by the Landlord since 2011.
- [6] In March of 2023 the parties entered into a written, one-year fixed-term tenancy agreement. The parties renewed the fixed-term on April 1, 2024 for another one-year. Rent was \$2,000.00 due on the first day of the month.
- [7] A security deposit of \$2,000.00 was required and paid in three installments.
1. \$1,000.00 on April 3, 2023;
 2. \$500.00 in May of 2023; and
 3. \$500.00 on August 23, 2023.
- [8] On October 2, 2024 the Landlord served the Tenants a *Form 4 (A) Eviction Notice* effective October 22, 2024 for non-payment of rent (the "Notice").
- [9] On October 24, 2024 the Tenants vacated the Unit and the tenancy ended due to the eviction notice.
- [10] On October 28, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application sought to retain the security deposit plus interest.
- [11] On November 1, 2024 the Landlord amended the Application seeking compensation exceeding the security deposit for pro-rated rental arrears in the amount of \$1,500.00.
- [12] On November 8, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for December 10, 2024. A copy was mailed to the Landlord.
- [13] On December 5, 2024 the Rental Office emailed the parties a 91-page PDF (the "Evidence Package or "EP"), included was 1-video file submitted by the Landlord. The Tenant did not submit any documents into evidence.
- [14] On December 10, 2024 at 9:00 a.m., the Landlord and one of the Tenants participated in the hearing. The Landlord confirmed all documents were included in the Evidence Package. The Tenant stated that he did not receive the Evidence Package. A copy of the Evidence Package was emailed to the Tenant. The Tenant acknowledged receipt of the Evidence Package and the hearing was postponed 40 minutes to provide the Tenant time to review the Evidence Package. At 9:40 a.m. the hearing commenced with both parties participating.

ISSUE

- i. Has the Landlord established a valid claim to retain the security deposit and interest?
- ii. Must the Tenants pay the Landlord for pro-rated rental arrears?

ANALYSIS

[15] For the reasons below, I find that the Landlord has established a valid claim and can retain the Tenants' security deposit plus interest for the requested rental arrears of \$1,500.00 and cleaning.

[16] Clauses 19(1) and 39(2)(a) of the *Residential Tenancy Act* (or the "Act") states:

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.

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...

[17] I note that the Act does not require the Tenants to leave the Unit in move-in ready condition for the next occupant. The applicable standard is "reasonably clean."

[18] Recently, the Island Regulatory and Appeals Commission (the "Commission") in Order LR25-02 commented the importance of photographs at the beginning of the tenancy to establish a baseline condition of the rental unit. The Commission stated:

"The Commission wishes to remind landlords that in order to fully support claims for damage and or necessary cleaning it is essential to have pictures for both the beginning and the end of the tenancy. Pictures at the beginning of the tenancy are necessary to establish a reference point with respect to condition and cleanliness."

[19] The Landlord submitted a *Form 5 Landlord Condition Inspection Report* (the "Report") dated October 24, 2024 (EP15).

[20] The Landlord stated that Residential Property had significant damage, particularly the driveway. The driveway had oil stains and sunk in because of stationary vehicles. The Landlord submitted a quote from M&M Resources for \$6,206.20 to repair the driveway (EP17). The Landlord also submitted photographs of the driveway during and at the end of the tenancy (EP19-22 and 66).

[21] The Landlord stated that the driveway was paved partially in August of 2022.

[22] The Landlord stated that there was some minor damage in the Unit, however, the Unit's garage required extensive cleaning. The Landlord stated that the garage's uncleanliness was not noticed during the move-out inspection and not included in the Report. The Landlord stated that the garage had a strong smell of cigarette smoke and the walls, washer, dryer and garage door were dirty (EP34-38; and 40-55). The Landlord stated that she cleaned and painted the garage herself. The Landlord did not quantify the labour and time required to clean and paint the garage.

[23] The Landlord stated that the Tenants did not pay rent for October of 2024. The Landlord stated that she is seeking pro-rated rent for October of 2024. I note that the tenancy ended October 24, 2024 which means the rental arrears owed is \$1,548.39 (24 days divide 31 days multiply \$2,000). However, in the Application and the Landlord stated that she is only seeking \$1,500.00 in pro-rated rental arrears.

- [24] The Tenants disputed the Landlord's claims.
- [25] The Tenant stated that the sinkholes in the driveway were not caused by his vehicles and that the oil stains could be removed with soap and hot water. The Tenant stated that the stationary vehicle was being repaired but it was moved numerous times from the driveway.
- [26] The Tenant stated that he did not smoke in the garage. The Tenant did a lot of work in the garage which caused the unclean condition.
- [27] The Tenant stated that the minor damage submitted by the Landlord is normal wear and tear and was not caused by his dog. The Tenant did admit to forgetting to repair the screen door which he removed.
- [28] The Tenant stated that he did a lot of repairs and work on the Residential Property for the Landlord. The Tenant stated that he does not owe rental arrears for October of 2024 because of the work completed on the Residential Property throughout the tenancy.
- [29] In response to the Tenant's submissions, the Landlord stated that there was an agreement between the parties and the Tenant was already compensated for the repairs and work the Tenant completed on the Residential Property.
- [30] I have reviewed the evidence and I find that the Landlord is entitled to retain the security deposit plus interest for pro-rated rental arrears for October of 2024, in the amount of \$1,500.00.
- [31] I find that the Notice establishes that the Tenants owed rent for October of 2024 and vacated the Unit due to the Notice. The parties provided undisputed evidence that the Tenants did not pay any rent for October of 2024. The Tenants did not provide evidence to establish that there was an agreement between the parties that October of 2024 rent would be forgiven in lieu of past repairs done by the Tenants.
- [32] Further, I find that the Landlord is entitled to compensation for cleaning and repainting the Unit's garage. The Landlord's evidence, particularly the photographs show the condition of the garage as being below the standard of "reasonably clean." I note that the Landlord did not submit a dollar amount for the cleaning and painting expenses. I find that the remaining balance of the security deposit and interest, totaling \$576.81 is a reasonable amount to attribute to the costs to complete the minor repairs, cleaning and painting of the Residential Property.
- [33] As for the claim against the driveway, I find that the Landlord has not established a valid claim for compensation against the security deposit or an amount exceeding the security deposit. I find that there is insufficient evidence to properly establish a baseline condition of the driveway. Further, I find that there is insufficient evidence to determine if the Tenants actions directly caused the damage to the driveway. The claim is denied.
- [34] The Application is allowed in part. The Landlord is entitled to retain the Tenants' security deposit and interest in the amount of \$2,076.81, calculated as follows:

Item	Amount
Security Deposit	\$2,000.00
Interest (APR 3 – APR 30/23)	\$1.92
Interest (MAY 1 – AUG 22/23)	\$11.52
Interest (AUG 23/23 – JAN 3/25)	\$63.37
Total Amount	\$2,076.81

IT IS THEREFORE ORDERED THAT

1. The Landlord will retain the Tenants' security deposit and interest, in the amount of \$2,076.81.

DATED at Charlottetown, Prince Edward Island, this 3rd day of January, 2025.

(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.