

INTRODUCTION

- [1] The Landlord claims against the Tenants for a total amount of \$3,600.00 for damage and cleaning.
- [2] The Landlord seeks to retain the Tenants' security deposit plus interest in the amount of \$709.77 and additional compensation in the amount of \$2,890.23.

DISPOSITION

- [3] I find that the Landlord will retain the Tenants' security deposit and interest plus additional compensation in the amount of \$70.23.

BACKGROUND

- [4] The Unit is one side of a side-by-side duplex (the "Residential Property").
- [5] In January of 2017 the parties entered into a written, one-year fixed-term tenancy agreement, which continued on a month-to-month basis. A security deposit of \$650.00 was paid. Rent was \$927.00 due on the first day of the month.
- [6] On September 10, 2024 the Landlord served the Tenants with a *Form 4 (A) Eviction Notice* (the "Notice") for non-payment of rent.
- [7] On October 22, 2024 the Residential Tenancy Office (the "Rental Office") issued Order LD24-352, which ordered that the tenancy end effective October 29, 2024 and that the Tenants and all occupants must vacate the Unit by this date.
- [8] On October 29, 2024 the Tenants vacated the Unit and the tenancy ended.
- [9] On November 5, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Application") with the Rental Office. The Application sought to retain the security deposit plus interest and sought compensation exceeding the security deposit.
- [10] On November 8, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for December 17, 2024. A copy was also mailed to the Landlord.
- [11] On December 12, 2024 the Rental Office emailed the parties a 31-page PDF document (the "Evidence Package" or "EP").
- [12] On December 17, 2024 the Landlord and one of the Tenants participated in the hearing. The Tenant represented the Tenants. The parties acknowledged receipt of the Evidence Package and that all documents received by the Rental Office were included in the Evidence Package.

ISSUES

- i. Has the Landlord established a valid claim to retain the security deposit and interest?
- ii. Must the Tenants pay compensation exceeding the security deposit?

ANALYSIS

[13] The Landlord is seeking compensation for cleaning and undue damage to the Unit in the total amount of \$3,600.00. The claims include the following:

- | | | |
|----|------------|-----------------------------|
| 1. | \$250.00 | Cleaning; |
| 2. | \$900.00 | Paint / Wall Repair; |
| 3. | \$1,200.00 | Repair Floors in Two Rooms; |
| 4. | \$1,200.00 | Remove Shed and Garbage; |
| 5. | \$50.00 | Replace Fridge Door Handle. |

Total: \$3,600.00

[14] Clause 39(2)(a) of the *Residential Tenancy Act* (or 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...

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

[16] Recently, the Island Regulatory 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."

[17] I note that the Landlord did not complete and did not submit a *Form 5 Landlord Condition Inspection Report* for the move-in or the move-out of the tenancy. Although the completion of the inspection reports was not required (see section 109 of the Act) because the tenancy started prior to the commencement of the Act, it would have been beneficial for the Landlord to have such inspection reports to help establish a baseline condition of the Unit.

Claims**Cleaning - \$250.00**

[18] The Landlord stated that the Unit was renovated prior to the Tenants moving into the Unit in 2017. The Landlord stated that the Unit was unclean at the end of the tenancy and required a full cleaning, which continues as of the hearing date. The Landlord stated that the total cost of cleaning was much higher but he is only charging the Tenants \$250.00. The Landlord submitted some photographs at the end of the tenancy showing the condition of the Unit.

[19] The Tenant stated that some cleaning was done prior to vacating the Unit.

[20] I have reviewed the evidence, particularly the photographs of the Unit taken at the end of the tenancy. I find that there are areas in the Unit which are below the standard of reasonably clean. Coupled with the garbage which remained in the Unit and needed to be removed, I find that the Landlord has established a valid claim of \$250.00 for cleaning the Unit.

Paint / Wall Repair - \$900.00

- [21] The Landlord stated that the Unit was painted in 2017. At the end of the tenancy the walls had a lot of nail holes that required to be filled in, sanded and repainted. The Landlord stated that there was some damage to the drywall. The Landlord stated that the total cost is much higher but he is only seeking \$900.00 for the cost to repair and paint the Unit's walls. The Landlord submitted photographs of the Unit's walls after the tenancy ended.
- [22] The Tenant stated that the walls did not have significant damage. The Tenant stated that he tried to fill some of the nail holes. The Tenant stated that after seven years the Unit required painting and that the nail holes and painting is normal wear and tear.
- [23] I have reviewed the evidence, particularly the photographs of the Unit taken at the end of the tenancy and the submissions of the parties. I find that after seven years of a tenancy, it would be expected that the Unit would require a fresh coat of paint. Further, the evidence suggests that the only damage to the walls was from nail holes. I find that the nail hole repairs and the painting is normal wear and tear. I also find that there is insufficient evidence to determine the baseline condition of the drywall at the beginning of the tenancy. The claim is denied.

Repair Floors in Two Rooms - \$1,200.00

- [24] The Landlord stated that two rooms had significant damage to the floors. The carpet was removed and tiles were missing. The Landlord stated that the carpets were very old but it will cost an estimated \$600.00 per room to repair/replace. The Landlord responded to the Tenant's testimony by denying that the Tenant ever mentioned flooding in the Unit.
- [25] The Tenant stated that the floor damage was caused by flooding in the Unit. The Tenant stated that he did not cause the flooding or the floor damage. The Tenant stated that the Landlord permitted the floor to be torn up but the Tenant did not get to put new flooring down.
- [26] I have reviewed the evidence, particularly the photographs of the Unit taken at the end of the tenancy and the submissions of the parties. I find that the Tenant did not dispute removing the carpet from the floors. The parties disputed whether or not the Tenant was given permission to remove the carpets. The Landlord admitted that the carpets were very old.
- [27] Based on the evidence submitted, I find that the Tenant did remove the carpets and did not replace the carpets. Taking into consideration the betterment principle, the age of the carpets and the fact the Landlord provided an estimate cost, I find that the Landlord is entitled to 20% of the estimated cost. This claim is allowed in part, in the amount of \$240.00.

Remove Shed and Garbage - \$1,200.00

- [28] The Landlord stated that the Tenant left a shed on the Residential Property along with garbage and firewood. The Landlord stated that it will cost an estimated \$1,200.00 to remove the shed and garbage.
- [29] The Tenant stated that some garbage was left behind. The Tenant stated that the firewood was left from Hurricane Fiona. The Tenant stated that he would like to return to the Residential Property and collect the shed and items in the shed.
- [30] The parties agreed at the hearing that the Tenant would meet the Landlord at the Residential Property at 4:30 p.m. on December 17, 2024 to collect the items from the shed. The Tenant would then permit the Landlord to retain the shed for his own use and the Landlord would remove this claim the Application. The parties were required to contact the Rental Office to confirm the agreed upon work was completed.

[31] At 4:32 p.m., on December 17, 2024 the Landlord emailed the Rental Office and the Tenant a photograph of the shed. The email stated:

"Please see attached pictures as requested earlier this morning. I don't believe the Tenant was on the property today. I'm assuming I can throw this stuff out and all the contents. Thanks for your help."

[32] The Tenant did not respond to the email and did not contact the Rental Office.

[33] I find that the terms of the agreement were not met by the Tenants and I will consider the claim on its merits.

[34] I have reviewed the evidence, particularly the photographs of the Residential Property taken at the end of the tenancy. I find that the parties did not dispute that the shed was the property of the Tenants and that it had not been removed from the Residential Property after the tenancy ended.

[35] Clause 43(1) of the Act states:

Tenant's personal property

(1) A tenant is not entitled to leave the tenant's personal property in the rental unit after the tenancy agreement is terminated.

[36] I find that the Landlord provided only an estimate to the cost for removing the Tenants' shed, firewood and garbage. I find also that the Tenants vacated the Residential Property on October 29, 2024 but the Tenants' shed remained on the property. After considering the testimony of the parties, I find that the Landlord is entitled to \$240.00 in compensation for the labour and time to remove the shed, firewood and garbage from the Residential Property. This amounts to 20% of the estimated cost submitted by the Landlord. The claim is allowed in part.

Fridge Door - \$50.00

[37] The parties did not dispute that the refrigerator door was broken during the tenancy. The Landlord stated that the actual cost to replace the door was \$200.00, however, he is only expensing \$50.00 to the Tenant. I find that this claim is allowed in the amount of \$50.00.

CONCLUSION

[38] The Application is allowed in part. The Landlord is entitled to retain the Tenants' security deposit and interest in the amount of \$709.77. The Tenants must pay the Landlord \$70.23 by the timeline below, calculated as follows:

Item	Amount
Total Amount Owed	\$780.00
Less Security Deposit & Interest	(\$709.77)
Total Amount	\$70.23

IT IS THEREFORE ORDERED THAT

1. The Landlord will retain the Tenant's security deposit and interest, in the amount of \$709.77.
2. The Tenant must pay the Landlord \$70.23 by January 28, 2025.

DATED at Charlottetown, Prince Edward Island, this 7th 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.