

INTRODUCTION

- [1] The Landlords claim against the Tenants for a total amount of \$4,396.29 for undue damage to the Residential Property's driveway (the "Driveway").

DISPOSITION

- [2] I find that the evidence does not establish the Landlords' claim for undue damage to the Driveway.

BACKGROUND

- [3] The Unit is one side of a side-by-side duplex (the "Residential Property") owned by the Landlords since 1989.
- [4] In October 2005 the parties entered into an oral month-to-month tenancy agreement for the Unit. A \$300.00 security deposit was paid at the beginning of the tenancy. Rent is \$721.00 due on the first day of the month.
- [5] On November 1, 2024 the Landlords filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks a monetary order in the amount of \$4,396.29 for compensation for undue damage to the Driveway.
- [6] On November 27, 2024 the Rental Office emailed the parties notice of a teleconference hearing (the "Notice of Hearing"), using the parties' emails disclosed on the Application.
- [7] On December 13, 2024 the Rental Office telephoned the Tenants to confirm receipt of the Notice of Hearing. The Tenants did not receive the Notice of Hearing due to an error in the Tenants' email address on the Application. The Rental Office emailed the Tenants the Notice of Hearing, using the correct email address.
- [8] On December 30, 2024 the Rental Office emailed the parties a 40-page PDF document (the "Evidence Package" or "EP").
- [9] On January 7, 2025 the Landlords and the Tenants participated in the teleconference hearing for determination of the Application. The parties confirmed receipt of the Evidence Package and that all documents submitted to the Rental Office were included.

ISSUE

- i. Have the Landlords established a claim for damage to the Driveway?

ANALYSIS

- [10] Subsection 28(4) of the *Residential Tenancy Act* (or the "Act") states:

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.

- [11] The Landlords claim that the Tenants caused undue damage to the Residential Property, and have failed to repair the damage. The Landlords are seeking repayment for the expenses incurred under clause 85(1)(d) of the Act, which state:

After hearing an application, the Director may make an order

(d) *requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.*

- [12] For the reasons below, I find that the evidence does not establish the Landlords' claim for undue damage to the Driveway.
- [13] The Landlords stated that the Driveway received repairs which included an extension of the driveway and new layering of asphalt and gravel. The Landlords submitted the September 2020 invoice into evidence (EP18).
- [14] The Landlords stated that in 2023 their maintenance person noticed the Driveway's condition. There were oil stains, sinking areas due to vehicles being stationary for too long in the Driveway and risk of significant damage. The Landlords stated that the Tenants had a tractor/snow plow parked in the Driveway. The Landlords admitted to allowing the Tenants to park the tractor in the Driveway and then asked the Tenants to remove it once the condition of the Driveway was noticed.
- [15] The Landlords submitted photographs of the driveway from August 2023, September 2023, April 2024, November 2024. The Landlords also submitted invoices from November 2023, including:
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|-----------------------------|-----------------------|
| Spreading topsoil and grass | \$739.29 (EP5) |
| Leveling asphalt base | \$3,450.00 (EP8) |
| <u>Delivery of topsoil</u> | <u>\$207.00 (EP9)</u> |
| Total | \$4,396.29 |
- [16] The Tenants stated that they asked permission to park the tractor in the Driveway. The Tenants stated that during their long tenancy they have never received complaints about the condition of the Driveway. The Tenants stated that in April 2023, the Landlords requested that the tractor not be parked in the Driveway. The Tenants stated that the tractor has not been parked in the Driveway since the Landlords' request.
- [17] The Tenants stated that the vehicles were not leaking oil. The Tenants stated that it could have been bleeding from the asphalt. The Tenants stated that the Landlords never received a second opinion about the condition of the Driveway and that they did not cause the damage.
- [18] I have reviewed the evidence from the parties. I find that the evidence does not establish the Landlords' claim for undue damage to the Driveway. Particularly, in order for the Landlords to be awarded a monetary remedy, they must first establish that the Tenants contravened the Act or the tenancy agreement. In this case, the Landlords claim that the Tenants contravened subsection 28(4) of the Act.
- [19] The photographic evidence alone does not establish that the Tenants caused the stains or have caused undue damage to the Driveway. Specifically, there is no expert opinion in the evidence to assist me in determining exactly what caused the damage, whether by actions or negligence of a party. In the absence of such evidence, I cannot conclude that the Tenants caused undue damage to the Residential Property. Therefore, the Application is denied.

IT IS THEREFORE ORDERED THAT

1. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 5th day of February, 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.