

INTRODUCTION

- [1] The Landlord seeks to keep the Tenant's security deposit including interest for damage.
- [2] The Tenant seeks the return of the security deposit.

DISPOSITION

- [3] I find that the Landlord has established a claim for damage and the Landlord will keep the Tenant's security deposit including interest, in the amount of \$893.69.

BACKGROUND

- [4] The Unit is an apartment in a 67-unit apartment building (the "Residential Property").
- [5] On August 15, 2022 the parties signed a written, one-year fixed-term tenancy agreement for the period of September 1, 2022 to August 31, 2023. The tenancy continued on a month-to-month basis. Rent was \$850.00 due on the first day of the month. A \$850.00 security deposit was paid by the Tenant in two installments: \$800.00 on August 8, 2022 and \$50.00 on October 1, 2022.
- [6] A co-tenant ("M.K.") signed the tenancy agreement and occupied the Unit with the Tenant. In August 2023, M.K. vacated the Unit and the tenancy was severed.
- [7] On October 28, 2024 the Tenant served the Landlord's representative (the "Representative") a *Form 3 Notice of Termination by Lessee of Rental Agreement* (the "Notice") with an effective date of November 30, 2024. The Notice was the prescribed form under the *Rental of Residential Property Act* which is the old legislation.
- [8] I note that since April 8, 2023 the *Residential Tenancy Act* (or the "Act") has been the legislated law on Prince Edward Island governing landlords and tenants in residential tenancies. The *Form 3 Tenant Notice of Termination* is the proper Form to be used in such circumstances, found on the Rental Office website. Despite the use of the incorrect form, I find that there is no significant effect on the Tenant's service of notice in this case.
- [9] On November 30, 2024 the Tenant vacated the Unit and the tenancy ended.
- [10] On December 9, 2024 the Representative filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord Application seeks to retain the Tenant's security deposit, including interest for damage.
- [11] On December 10, 2024 the Tenant filed an amended *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office seeking the return of the security deposit. The Tenant Application also sought a \$50.00 parking deposit, however, at the hearing, the Tenant stated she was not seeking any additional compensation.
- [12] On December 18, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for January 16, 2025.
- [13] On January 8, 2025 the Rental Office emailed the parties a 50-page PDF document, including one-video-recording submitted by the Tenant (the "Evidence Package" or "EP").
- [14] On January 16, 2025 the Representative and the Tenant joined the teleconference hearing. The parties acknowledged receipt of the Evidence Package and that all the documents and video sent to the Rental Office were included in the Evidence Package.

ISSUE

- A. Has the Landlord established a valid claim against the Tenant's security deposit for damage?

ANALYSIS

- [15] For the reasons below, I find that the Landlord has established a claim for damage and will keep the Tenant's security deposit including interest, in the amount of \$893.69.
- [16] The Representative stated that the Unit required repairs, painting and replacement of appliances. The total cost of the repairs was \$1,800.00.
- [17] The Landlord submitted a written submission from the maintenance person, which summarized the December 9, 2024 inspection as follows: Significant smoke damage was found on the walls and the ceiling. This required two coats of primer, sealer and then painted with two coats of paint. The smoke damage was also found inside the appliances. The stove burners' elements and receptacles were covered in grease which could not be cleaned, and required replacement. There were also burnt-out pans on the stove (EP22).
- [18] The Representative stated that the Unit was freshly painted prior to the Tenant moving into the Unit. The damage to the walls, ceiling and the appliances was not normal wear and tear.
- [19] The Landlord submitted photographs of the Unit after the tenancy ended (EP23-41; 43-47) and one photograph of the kitchen during the tenancy in the Fall of 2022 (EP42). The Representative stated that the photograph on EP42 shows no smoke damage to the wall and the ceiling. The Representative stated that the stove was new and it has safety features. The Representative stated that the Tenant wanted to cook on high heats but the stove would not operate under high heats because of the safety features.
- [20] The Representative stated that all the work was done by the Landlord's maintenance and cleaning staff. The Representative stated that the security deposit does not cover the full \$1,800.00; however, the security deposit was deducted to cover the following: \$600.00 to repaint the Unit, \$100.00 to replace the stove tops, \$90.00 to replace the microwave and \$65.00 to replace the curtains. There were also cleaning costs associated with the Unit and lost rent because the Landlord was unable to re-rent the Unit for December 2024.
- [21] The Tenant disputed the Landlord's claims against the security deposit. The Tenant stated that the Unit was not painted at the beginning of the tenancy. The Tenant stated that she was told by the Representative that the Unit would be painted within the first week of the tenancy, but nobody showed up to paint the Unit.
- [22] The Tenant stated that the stove was not working properly and she informed the Representative of her concerns about the stove. The Tenant stated that the condition of the walls were normal wear and tear. The Tenant stated that she cleaned the Unit before vacating and that it was reasonably clean. The Tenant stated that she tried to clean the oil spot on the ceiling, however, the chemical she used left the discoloured mark shown on EP29.
- [23] I have reviewed the evidence provided by the parties and my findings are as follows.
- [24] Clause 39(2)(a) of the Act provides the following rules regarding the condition of a rental unit at the end of the 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...*

- [25] Recently, the Island Regulatory and Appeals Commission (the "Commission") in Order LR25-02 commented on the importance of photographs at the beginning of the tenancy to establish a baseline condition of a 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."

- [26] In this case, the Landlord did not submit photographs of the Unit prior to the start of the tenancy. Further, a move-in and move-out inspection, accompanied by a *Form 5 Landlord Condition Inspection Report* would have also been helpful in assisting in establishing a baseline condition of the Unit. I note that in this case, inspection reports were not obligatory under section 109 of the Act.
- [27] The Landlord provided one photograph of the Unit during the tenancy and provided a written submission from an individual who did not attend the hearing to provide oral evidence.
- [28] However, the Landlord did provide photographs of the Unit at the end of the tenancy showing smoke damage and discolouring to the Unit's wall, ceiling and appliances.
- [29] After reviewing the evidence, I find that the damage was not normal wear and tear and that the Unit required painting, repairs and replacement of appliances, particularly the microwave and stove tops. The Landlord did not submit invoices or receipts into evidence, however, the Representative provided oral evidence of the costs associated with the damage and repairs.
- [30] I accept the Representative's evidence that the total cost was more than the total amount of the security deposit. I also accept the Representative's evidence that the Unit required the painting and repairs as outlined in the evidence.
- [31] The Commission in Order LR24-06 commented on the principle of betterment. The basic principle at common law is that a party should not be put in a better position than they would have been had the wrongdoing not occurred.
- [32] I note that the Landlord is not seeking additional compensation exceeding the security deposit, despite providing oral evidence that the total cost was \$1,800.00. I find that the Landlord has established a valid claim to keep the Tenant's security deposit including interest to cover the costs associated with repainting the Unit and repairing and replacing the microwave and stove tops.
- [33] The Landlord Application is allowed. The Landlord will keep the security deposit, including interest in the amount of \$893.69.
- [34] The Tenant Application is denied.

IT IS THEREFORE ORDERED THAT

1. The Landlord will keep the Tenant's security deposit, including interest, totaling \$893.69.

DATED at Charlottetown, Prince Edward Island, this 26th 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.