

INTRODUCTION

- [1] The Landlord seeks to keep a portion of the Tenants' security deposit for damage, cleaning and painting.

DISPOSITION

- [2] I find that the evidence does not establish valid claims for the Landlord to retain a portion of the Tenants' security deposit for damage, cleaning and painting.

BACKGROUND

- [3] The Unit is an apartment unit located in a 98-unit building (the "Residential Property").
- [4] On November 21, 2022 the Tenants paid a \$1,855.00 security deposit. The parties entered into a written, one-year fixed-term tenancy agreement. Rent was \$1,855.00 due on the first day of the month. The Tenants paid a \$140.00 parking fee. The parties renewed the one-year fixed-term for the period of November 29, 2023 to November 28, 2024.
- [5] On November 29, 2024, the Representative completed a *Form 5 Landlord Condition Inspection Report* (the "Report") with the Tenants. The Tenants vacated the Unit and the tenancy ended by mutual agreement.
- [6] On December 5, 2024 the Landlord's representative (the "Representative") filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord seeks to retain a portion of the Tenants' security deposit for damage, cleaning and painting.
- [7] On December 6, 2024 the Representative returned \$1,139.58 of the Tenants' security deposit, including interest. The Landlord is seeking to retain the remaining \$800.00 balance for damage, cleaning and painting.
- [8] On January 6, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for February 6, 2025, along with a copy of the Application.
- [9] On January 28, 2025 the Rental Office emailed the parties an updated notice of a teleconference hearing scheduled for February 13, 2025.
- [10] On January 28, 2025 the Rental Office emailed the parties a 77-page PDF document (the "Evidence Package" or "EP").
- [11] On February 13, 2025 the Representative and one of the Tenants (the "Tenant") joined the teleconference hearing. The Tenant confirmed she was representing the Tenants. The parties confirmed receipt of the Evidence Package and that all documents submitted to the Rental Office were included in the Evidence Package.
- [12] After the hearing, the Representative submitted two-pages of additional evidence (the "Additional Evidence"), which were provided to the Tenants.

ISSUE

- A. Has the Landlord established valid claims against the Tenants' security deposit?

ANALYSIS

- [13] For the reasons below, I find that the evidence does not establish valid claims for the Landlord to retain \$800.00 from the Tenants' security deposit for damage, cleaning and painting.
- [14] Clause 39(2)(a) of the *Residential Property Act* (or 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...*
- [15] 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."*
- [16] In this case, the Landlord did not submit photographs of the Unit prior to the start of the tenancy. Further, a pre-tenancy inspection report would have been helpful in assisting in establishing a baseline condition of the Unit. I note that in this case, a pre-tenancy and post-tenancy inspection report was not obligatory under section 109 of the Act.
- [17] The Representative provided photographs of the Unit at the end of the tenancy. The Representative stated that the Tenants were the first occupants of the Unit. The Representative stated that the Unit required cleaning. The carpet to the Residential Property's hallway was stained and damaged, which the Representative accused the Tenants of damaging.
- [18] The Representative stated that the total cost to clean, repair and paint the Unit was \$2,000.00. However, the Landlord is only retaining \$800.00 to cover the costs. The Representative provided an invoice in the Additional Evidence. A copy of the Report was also provided in the Additional Evidence.
- [19] The Tenant denied the Representative's claims. The Tenant provided photographs of the Unit at the end of the tenancy into evidence. The Tenant stated that she cleaned the Unit. The Unit was left reasonably clean. The Tenant stated that the side of the stove was hidden by the counter and the stove was never moved in the two years she lived in the Unit.
- [20] The Tenant stated that the paint was only worn on two areas of the walls, which was normal wear and tear. The Tenant denied causing any damage to the Unit and that the hallway carpet is a public area.
- [21] I have reviewed the evidence provided by the parties and I find that the Landlord has not established a baseline condition of the Unit. Despite the Tenants being the first occupants for the Unit, the Landlord did not submit objective and direct evidence to establish the Landlord's claims. Without evidence to establish a baseline condition, such as "before" photographs, a pre-tenancy inspection report or direct evidence from a witness – e.g., the property manager or site manager who may have completed any inspections, the Landlord has not established its claims that the Unit was left in a condition below the standard of reasonably clean and/or below normal wear and tear caused by the Tenants.
- [22] The Application is denied. The Landlord must return the \$800.00 balance of the Tenants' security deposit, including interest on the \$800.00 balance, by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$805.17 by April 14, 2025.

DATED at Charlottetown, Prince Edward Island, this 12th day of March, 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.