

Introduction

- [1] On April 27, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking the following remedies:

To request the return of the security deposit; and

Other: Return of April's rent (additional month).

- [2] The Tenant served the Landlord the Application.
- [3] On June 23, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord participated.

Issue to be Decided

- i. Is the Tenant entitled to a return of the security deposit?
- ii. Is the Tenant entitled to a return of April 2023 rent?

Summary of the Evidence

- [4] On October 1, 2022 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the rental unit. The rental unit is situated in a room within the Residential Property. The fixed term expired on March 31, 2023. Rent was \$1,000.00 due on the last day of the month. A security deposit of \$1,000.00 was required and paid. The Tenant vacated the Premises on March 31, 2023. The interest accrued on the security deposit was \$8.22.

Landlord's Evidence and Submissions

- [5] The Landlord disputes the Application. The Landlord stated that he should not have to return April 2023 rent because the Tenant did not provide sufficient notice. The Landlord stated that the tenancy agreement was due to expire on March 31, 2023. The Tenant did not find another place to live and in early March 2023 requested to stay for the month of April 2023. The Landlord stated that would be fine, however, in the middle of March 2023, the Tenant advised him he would be leaving at the end of March 2023. The Landlord stated that the Tenant paid April 2023 rent, however, the Tenant "flip flopped" and the Landlord stated he was unable to find another tenant.
- [6] The Landlord admitted to not returning the security deposit, nor serving the Tenant with a Notice of Intention to retain the security deposit (Form 8). The Landlord also admitted to never filing an application with the Rental Office in relation to the security deposit. The Landlord stated that he retained the security deposit for damage and cleaning. Further, the Landlord stated that the Tenant owed him \$350.00 for a bed frame which the parties agreed in a purchase of sale.

Tenant's Evidence and Submissions

- [7] The Tenant stated that he found a new place to living mid-March and vacated March 31, 2023. The Tenant stated that he informed the Landlord of this and still paid April 2023 rent. The Tenant stated that he never lived in the Residential Property in April 2023. The Tenant stated that the tenancy agreement ended March 31, 2023 and that there was a verbal agreement that he could stay until end of April 2023 but that was not necessary.

- [8] The Tenant stated that he is entitled to the return of the security deposit. The Tenant stated that the Landlord did not provide him with any type of form or application. The Tenant stated that when he reached out to the Landlord, the Landlord informed him that he was going to keep \$800.00 of the security deposit.
- [9] The Tenant stated that he wished to dispute the Landlord retaining that much from his security deposit. The Tenant stated that the parties did agree on a price for the bed frame, however, that price was \$300.00. The Tenant submitted a screenshot of a text message conversation with the parties. The text message outlines an agreement of \$300.00 for the bed frame and that the Tenant would pay for it or that it would be taken out of the security deposit.

Analysis

- [10] The first issue: *Is the Tenant entitled to a return of the security deposit?* The Officer notes that section 110. of the Act states:

Transitional – security deposit

Where a landlord holds a security deposit in accordance with the former Act, the security deposit is deemed to be held in accordance with this Act and the provisions of this Act respecting security deposit apply. 2022, c.88, s.110.

- [11] The Officer notes that subsections 40.(1), (2), (3) and (4) of the Act states:

Return of security deposit

Except as provided in subsection (2) or (3), within 15 days after the date the tenancy ends or is assigned, the landlord shall either

- (a) issue payment, as provided in subsection (5), of any security deposit to the tenant with interest calculated in accordance with the regulations; or*
- (b) make an application to the Director under section 75 claiming against the security deposit.*

Landlord may retain amount from security deposit

A landlord may retain from a security deposit an amount that

- (a) The Director has previously ordered the tenant to pay to the landlord; and*
- (b) Remains unpaid at the end of the tenancy.*

Retention by landlord, other circumstances

A landlord may retain an amount from a security deposit if

- (a) At the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
- (b) After the end of the tenancy, the Director orders that the landlord may retain the amount.*

Consequences of non-compliance

Where a landlord does not comply with this section, the landlord shall

- (a) Shall not make a claim against the security deposit; and*
- (b) Shall pay the tenant double the amount the security deposit.*

- [12] Based on the testimony and evidence provided by the parties the Officer finds that the Landlord did not return the security deposit to the Tenant and did not file an application with the Rental Office as required by subsection 40.(1) of the Act. However, the Officer notes that subsection 40.(3) of the Act provides an exception to subsection 40.(1), for a landlord to retain the security deposit without application. The Officer finds that based on the evidence provided that the parties agreed that the Tenant would pay \$300.00 for a bed frame. The Tenant never paid for the bed frame and therefore the Landlord is entitled to retain \$300.00 from the security deposit as per the amount agreed upon by the parties.
- [13] The Officer finds that the Landlord has not filed an application with the Rental Office within 15 days of the end of the tenancy agreement. The Landlord is entitled to retain \$300.00 without application, however, the Landlord is not entitled to retain the remaining balance of the security deposit. Therefore, the Landlord shall return \$700.00 plus interest to the Tenant.
- [14] The Officer finds that subsection 40.(4) of the Act is not triggered in this case. Although the Landlord did not return the security deposit and did not file an application with the Rental Office as required by subsection 40.(1) of the Act, the Landlord was partially relying on an agreement between the parties to retain a portion of the security deposit which is permitted under subsection 40.(3) of the Act. The Landlord ought to have filed an application with the Rental Office if he wished to retain the remaining balance of the security deposit for alleged cleaning and damage. Therefore, the Officer finds that the Landlord is compliant with section 40 of the Act.
- [15] The second issue: *Is the Tenant entitled to a return of April 2023 rent?* The Officer notes that subsection 55.(3) of the Act states:

Notice for fixed-term tenancy

A tenant may end a fixed-term tenancy by giving the landlord a notice of termination effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice;*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and*
- (c) is the day before the day that rent is payable under the tenancy agreement.*

- [16] The Officer finds that the parties verbally agreed to extend the tenancy agreement and continue as a month-to-month. However, the Tenant changed his mind and informed the Landlord mid-March 2023 that he was vacating at the end of March 2023. The Landlord relied on the Tenant's verbal agreement that he would continue to live in the rental unit for April 2023. The Officer finds that the Tenant did not provide the legislated one-month notice as required by subsection 55.(3) of the Act. Therefore, the Tenant is not entitled to a return of April 2023 rent.

Conclusion

- [17] The Application is allowed in part.
- [18] The Landlord shall retain \$300.00 from the security deposit.
- [19] The Landlord shall return \$708.22 of security deposit to the Tenant on or before August 2, 2023.
- [20] The return of rent part of the Application is denied.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$300.00 from the security deposit.
- B. The Landlord shall pay the Tenant \$708.22 on or before August 2, 2023

DATED at Charlottetown, Prince Edward Island, this 10th day of July, 2023.

(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.