

Introduction

- [1] On April 19, 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

I am a former Tenant and request compensation from my former Landlord for a bad faith eviction.

- [2] The Tenant served the Landlord with the Application.
- [3] On June 21, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and a representative of 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 compensation for a bad faith eviction?

Summary of the Evidence

- [4] On May 1, 2021 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. The fixed term went from May 1, 2021 to April 30, 2022 and then converted to a month-to-month agreement. Rent was \$1,250.00 due on the first day of the month. A security deposit of \$1,250.00 was required and paid.

Landlord's Evidence and Submissions

- [5] The representative testified that the Landlord did not return the security deposit to the Tenant, and did not file an application with the Rental Office to retain it. The representative stated that the Landlord was busy repairing and cleaning the Residential Property.
- [6] The representative testified that after the Tenant vacated the Residential Property, due to an eviction notice, the Landlord did move into the Residential Property for approximately two months. On or around June 1, 2023 the Landlord vacated the Residential Property and two young women moved into the Residential Property. The representative stated that the young women are related to the Landlord. The representative stated that the Landlord provided two months' notice to the Tenant and that she had plenty of time to find new living accommodations.
- [7] The Landlord submitted into evidence photographs of numerous eviction notices being posted to the Residential Property's door. Also, photographs of the Landlord present at the Residential Property.
- [8] Part of the evidence was the Island Regulatory and Appeals Commission (the "Commission") Order LR23-05. This was a separate dispute between the parties where it was ordered that the Tenant pay \$2,886.90 to the Landlord for outstanding rent. The representative denied the Tenant's testimony that the rent outstanding was paid.

Tenant's Evidence and Submissions

- [9] The Tenant testified that on April 1, 2021 she paid \$1,250.00 to the Landlord as a security deposit. The Tenant stated that she is entitled to the security deposit because the Landlord did not file an application, and did not provide her with any notice or communication that he was keeping the security deposit.
- [10] The Tenant further stated that she is seeking compensation due to being evicted in bad faith. The Tenant stated that on October 20, 2022 she received a Notice of Termination (Form 4) by the Landlord to vacate the Residential Property by December 20, 2022 because the Landlord wanted possession for "own use." The Tenant stated that in Rental Office Order LD23-018 she was ordered to vacate the Residential Property by January 31, 2023. The Tenant stated that she appealed the Order but was unsuccessful. The Tenant stated that she vacated the Premises on January 31, 2023 and paid the outstanding rent in the amount of \$2,886.90 on January 30, 2023.
- [11] The Tenant stated that she has been homeless for the past five months, living in hotels and having to store the majority of her personal belongings. The Tenant stated that the Landlord never moved into the Residential Property. The Tenant stated that she returned to the Residential Property in May 2023 to retrieve some personal belongings from the Residential Property's basement. The Tenant stated that she found two young women living in the Residential Property.
- [12] The Tenant is seeking \$16,174.82 in compensation for the hotel expenses over the past five months (February 2023 to June 2023). Further, the Tenant is seeking \$1,051.00 in compensation for storage fees and \$4,900.00 in meals.
- [13] The Tenant submitted into evidence numerous receipts and invoices for storage costs from U-Haul. The Tenant also submitted numerous receipts for hotels and inns dating from February to June 2023.

Analysis

- [14] 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.

- [15] The Officer notes that subsections 40.(1), (2) 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.*

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.*

- [16] 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.(2) 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 Island Regulatory and Appeals Commission (the "Commission") in Order LR23-05 dismissed the Tenant's appeal and confirmed the Rental Office's Order LD23-018, and ordered the Tenant pay the Landlord \$2,886.90 in outstanding rent.
- [17] The Officer notes that the Tenant testified that she paid the outstanding balance on January 30, 2023 in cash to the Landlord's representative before vacating the Residential Property. The Tenant submitted into evidence a hand written letter from a witness who allegedly was present during the events which the Tenant testified to. However, the Officer finds that the written statement was not under oath and the witness did not participate at the hearing to provide their sworn testimony.
- [18] The Landlord's representative denied receiving any cash from the Tenant and stated that the rent is still outstanding.
- [19] The Officer finds that there is no direct objective evidence to establish that the Tenant has paid the outstanding arrears. Therefore, the Landlord is entitled to retain the total amount of the security deposit \$1,250.00 to cover the outstanding rent ordered to be paid to the Landlord as prescribed by subsection 40.(2)(a) and (b) of the Act.
- [20] Further, 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 within 15 days of the end of the tenancy agreement, as required by subsection 40.(1) of the Act, the Landlord was entitled to retain the security deposit amount without application as permitted under subsection 40.(2) of the Act. Therefore, the Officer finds that the Landlord was compliant with section 40 of the Act.
- [21] The second issue: *Is the Tenant entitled to compensation for a bad faith eviction?* The Officer notes that subsection 65.(1) of the Act states:

Notice given in bad faith

A former tenant may make an application to the Director under section 75 to determine whether a landlord gave a notice of termination under sections 62, 63 or 64 in bad faith.

- [22] The Officer finds that based on the testimony and evidence submitted that the Landlord served a Notice of Termination by Lessor of Rental Agreement (Form 4) on October 20, 2022 for own use pursuant to sub-subsection 15.(1)(a) of the *Rental of Residential Property Act* (the "Former Act"). The Officer finds that subsection 65.(1) of the *Act* only allows a former tenant to apply for such a remedy if they were evicted under sections 62, 63 or 64 in bad faith. In this case, the Tenant was not evicted under any of the sections prescribed and that there are no transitional provisions in the *Act* to permit the Tenant from seeking such a remedy under the current set of facts. Therefore, the Officer finds that the Tenant is not entitled to a remedy under subsection 65.(1) of the *Act* and the Application is denied.

Conclusion

- [23] The Application is denied.
- [24] The Landlord shall retain the security deposit in the total amount of \$1,250.00 for outstanding rental arrears.

IT IS THEREFORE ORDERED THAT

- A. The Application is denied.
- B. The Landlord shall retain the security deposit in the total amount of \$1,250.00 for outstanding rental arrears.

DATED at Charlottetown, Prince Edward Island, this 11th 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.