

Introduction

- [1] On April 21, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking a return of the security deposit.
- [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 participated. The Landlord did not have a representative at the hearing.

Issue to be Decided

- i. Is the Tenant entitled to a return of the security deposit?

Summary of the Evidence

- [4] On November 1, 2020 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. The fixed term expired October 31, 2021 and converted to a month-to-month agreement. The Residential Property is situated in a 20-unit apartment building. Rent was \$750.00 due on the first day of the month. A security deposit of \$750.00 was required and paid.

Landlord's Evidence and Submissions

- [5] The Landlord did not participate at the hearing and did not submit any evidence. At the beginning of the hearing the Rental Office attempted to contact the Landlord's representative with no success. The hearing proceeded in the Landlord's absence.

Tenant's Evidence and Submissions

- [6] The Tenant's evidence and testimony is undisputed. The Tenant stated that at the start of the tenancy agreement she paid \$750.00 for the security deposit in two installments (\$350.00 and \$400.00). The Tenant stated that on February 1, 2023 she vacated the Residential Property due to the poor condition it was in. The Tenant stated that she provided contact information to the Landlord's representative. The Tenant stated that the Landlord's representative intended to return the security deposit, however, there were delays from the accounting department.
- [7] The Tenant stated that she has not received the security deposit funds and has not received any update, application or general communication from the Landlord's representative.

Analysis

- [8] 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.

[9] The Officer further 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.*

[10] The Officer finds based on the undisputed evidence of the Tenant, she vacated on February 1, 2023. At the time, the *Rental of Residential Property Act* (the "Former Act") was the law. The Landlord was required to either return the security deposit to the Tenant or serve a Notice of Intention to Retain the Security Deposit (Form 8) on the Tenant within 10 days of the Tenant vacating. The Officer finds that the Landlord did neither.

[11] The Officer finds that section 110 of the Act deems the security deposit to be held in accordance to the Act and the Act applies. The Officer finds that at the time of the hearing the Landlord still did not return the security deposit and did not file any application with the Rental Office as required by section 40.(1) of the Act. Further, the Officer finds that the evidence does not suggest that subsections 40.(2) or 40.(3) apply in this case. Therefore, the Officer finds that the Landlord has not complied with section 40. of the Act and, as a result, triggers section 40.(4) of the Act.

[12] The Tenant is entitled to a return of the security deposit and that the Landlord shall pay the Tenant double the amount of the security deposit pursuant to subsection 40.(4) of the Act.

Conclusion

[13] The Application is allowed.

[14] The Landlord shall pay the Tenant double the security deposit.

[15] The Landlord shall pay the Tenant \$1,500.00 on or before August 11, 2023.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$1,500.00 on or before August 11, 2023.

DATED at Charlottetown, Prince Edward Island, this 12th 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.