

Introduction

- [1] On May 16, 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 Tenant's security deposit. The Tenant vacated the Residential Property on May 1, 2023.
- [2] On August 14, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant participated in the hearing. The Landlord did not participate.

Issue to be Decided

- i. Must the Landlord return the security deposit to the Tenant?

Summary of the Evidence

- [3] On January 1, 2021, the Landlord and the Tenant entered into a written month-to-month tenancy agreement. The Residential Property is a rented room in a house. Rent was \$600.00 due on the first day of the month. A security deposit of \$600.00 was required and paid.

Landlord's Evidence and Submissions

- [4] The Landlord submitted that the Tenant only provided notice of termination on April 30, 2023, and therefore owes rent for May, which the Tenant has not paid.
- [5] The Landlord submitted that the Tenant did not properly clean the unit, that the Tenant did not dispose of garbage, that the Tenant did not replace a microwave that the Tenant broke, and that the Tenant damaged the wall of the unit. The Landlord submitted that the cost to clean the unit was \$60.00, the cost to dispose of the garbage was \$100.00, the cost to replace the microwave was \$150.00, and the quote for the cost repaint the wall was \$300.00. The Landlord submitted photos of garbage in the unit and damage on the wall.

Tenant's Evidence and Submissions

- [6] The Tenant testified that he has not received his security deposit, despite it now being over three months since he moved out of the Residential Property. The Tenant testified that the Landlord did not file any application to claim against the security deposit.
- [7] The Tenant submitted a Tenant Notice of Termination (Form 3) to the Landlord on April 30, 2023, for an effective vacate date also listed as April 30, 2023. The Tenant testified that he arranged for a new tenant to occupy the Residential Property in May of 2023 with the consent of the Landlord. The Tenant testified that he was unsure which day the new tenant moved in, although he believed it was within the first week of May, 2023.

Analysis

- [8] The Officer notes subsections 40(1), (2), (3), (4), and 55.(2) of the Act state:

40. Return of security deposit

(1) 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

- (2) *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

- (3) *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

- (4) *Where a landlord does not comply with this section, the landlord*

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

55. Notice for monthly or other periodic tenancy

- (2) *A tenant may end a month-to-month tenancy or other periodic 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; and*
 - (b) *is the day before the day that rent is payable under the tenancy agreement.*

- [9] The Officer notes that in such matters where there is a dispute over a security deposit, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all claims against the security deposit.
- [10] The Officer finds that the tenancy agreement ended by May 31st, 2023 at the latest, based upon subsection 55.(2) of the *Act*. The Officer finds that it is immaterial that the Tenant made the Application prior to 15 days elapsing from the end of the tenancy agreement. The Landlord was required to either return the security deposit to the Tenant or serve a Landlord Application to Determine Dispute (Form 2B) to retain the security deposit on the Tenant within 15 days of the end of the tenancy agreement. The Officer finds that the Landlord did not do either.
- [11] 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 Officer finds that 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 \$1,200.00 on or before September 18, 2023.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$1,200.00 on or before September 18, 2023.

DATED at Charlottetown, Prince Edward Island, this 17th day of August, 2023.

(sgd.) Colin Trewin
Colin Trewin
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.