

Introduction

- [1] On April 20, 2023, the Tenants filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking:

To request a return of the security deposit.

Other: Landlord has valuable belongings of ours in storage. Refuses to return them.

- [2] On August 10, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants and a Representative for the Landlord participated. At the beginning of the hearing the parties agreed that the Tenants' property had been returned to them. The Tenants stated any remaining property left at the Residential Property can be considered abandoned and the Landlord can dispose of the property.

Issue to be Decided

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

Summary of the Evidence

- [3] On December 1, 2022, the Tenants and the Landlord entered into a written, fixed-term rental agreement for the Residential Property. The Residential Property consists of single-family cottage. Rent was \$1,400.00 per month due on the first day of the month. A security deposit of \$1,400.00 was paid. The Tenants vacated the Residential Property on April 1, 2023.

Tenants' Evidence and Submissions

- [4] N.M. stated when the Tenants vacated the Residential Property there was no damage and only wear and tear. He stated the Landlord refused to return the security deposit or provide the Tenants with any paperwork for the security deposit. N.M. stated there was no pre-inspection and no-post inspection of the Residential Property. He stated the photographs submitted by the Landlord were not date stamped.
- [5] N.M. stated there was no damage to the floors when the Tenants moved out. He stated the Landlord told the Tenants prior to them moving out that he was going to replace the floors anyway. N.M. stated there were a few bags of garbage left when they moved because the garbage bins were full. He stated there may have been some dog waste in the yard but it would have been covered with snow when they moved out.
- [6] R.M. testified in February or March 2023, the Landlord attended the Residential Property and spoke to R.M. The Landlord told R.M. that the floors were in good shape but he wanted to replace them because he did not like the colour of the floors.
- [7] N.B. testified she was visiting the Tenants in February 2023. She stated the Landlord attended the Residential Property and measured some of the floors. She stated the Landlord told her that he was planning on replacing the floors. N.B. did not see any evidence of damage on the floors at that time.
- [8] M.B. testified she was present when the Tenants moved out. She stated the Residential Property was clean and there was no damage to the property.

Landlord's Evidence and Submissions

- [9] The Landlord stated he has kept the damage deposit because of damages the Tenants caused to the Residential Property. He stated when the Tenants moved out there was garbage left behind and there was dog waste in the yard. The Residential Property needed extra cleaning and his painter told him the walls needed to be painted. The Landlord submitted into evidence statements from three witnesses who stated the property was unclean after the Tenants moved out and the floor was damaged and had to be replaced. The Landlord submitted some photographs of the Residential Property into evidence.
- [10] The Landlord stated he was unable to rent the property for the month after the Tenants moved out because of the cleaning and repairs he had to do. The Landlord stated he did not serve the Tenants with a notice to retain the security deposit as he did not think that the Rental Office had jurisdiction because it was just a short-term rental. He stated he did email the Tenants and told them he was keeping the security deposit. The Landlord submitted an invoice into evidence showing that it cost him \$6,663.82 to clean and repair the property after the security deposit had been deducted.

Analysis

- [11] The Tenants are seeking a return of the security deposit in the amount of \$1,400.00. The Landlord is seeking to retain the security deposit for various reasons such as damages, cleaning, and loss of rental income. The Landlord stated he did not serve the Tenants with a notice that he was retaining the security deposit as he did not think the Rental Office had jurisdiction as it was a short-term rental.
- [12] Section 4 of the *Act* lists the types of accommodations the Officer does not have jurisdiction over:
- (a) temporary accommodation licensed under the Tourism Industry Act, except when the temporary accommodation under that Act is provided as accommodation for a guest for a continuous period of two months or more;
 - (b) living accommodation provided to a person for penal, correctional, rehabilitative or therapeutic purposes;
 - (c) living accommodation provided to temporarily shelter persons in need;
 - (d) living accommodation provided in a hospital, nursing home or other facility established to provide personal care for persons;
 - (e) living accommodation owned or operated by an educational institution and provided by that institution to its students;
 - (f) living accommodation provided for the purposes of accommodating the needs of children, youth or persons in the custody of the Director of Child Protection under the Child Protection Act;
 - (g) living accommodation provided as a residential institution under the Social Assistance Act;
 - (h) living accommodation provided on a transient basis by a religious, charitable or nonprofit organization for the purpose for which the organization is established;
 - (i) living accommodation provided by a co-operative housing corporation to its members or shareholders, except as provided for in the Co-operative Associations Act; or
 - (j) tenancy agreements, rental units or residential properties prescribed by the regulations.

- [13] The Officer notes that there was no evidence presented that the Residential Property falls into any of the categories listed in section 4 of the Act. The Officer is therefore satisfied there was a Landlord and Tenant relationship between the parties and the Officer does have jurisdiction in this matter to be able to make a determination with regards to the Application.

- [14] 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.

- [15] Subsections 40.(1), (2), (3) and (4) of the Act state:

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.*

- [16] The tenancy agreement ended on April 1, 2023. At that time, the *Rental of Residential Property Act* (the “*Former Act*”) was the law. The current *Act* did not come into force until April 8, 2023. The Officer notes under the *Former Act* the Landlord was required to either return the security deposit to the Tenants or serve a Notice of Intention to Retain the Security Deposit on the Tenants (Form 8) within 10 days. The Landlord did neither.
- [17] After the current *Act* came into force on April 8, 2023, the Landlord had 15 days from the end of the tenancy agreement to return the security deposit or make a claim against the security deposit. The Landlord did neither. The Officer notes that at this time section 110 of the *Act* deems the security deposit to be held in accordance with the current *Act* and the current *Act* applies.
- [18] The Officer notes 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*. Furthermore, 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, section 40.(4) of the *Act* applies.
- [19] The Officer finds that the Tenants are entitled to a return of the security deposit and that the Landlord shall pay the Tenants double the amount of the security deposit, in the amount of \$2,800.00, pursuant to subsection 40.(4) of the *Act*.

Conclusion

- [20] The Application is allowed.
- [21] The Landlord shall pay the Tenants double the security deposit in the amount of \$2,800.00 on or before September 1, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed.
- B. The Landlord shall pay the Tenants double the security deposit in the amount of \$2,800.00 on or before September 1, 2023.

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

(sgd.) Mitchell King

Mitchell King
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.