

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 April 29 or April 30, 2023.
- [2] On August 16, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A Representative for the Landlord participated in the hearing. The Tenant did not participate.

Issue to be Decided

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

Summary of the Evidence

- [3] On December 15, 2022, the Landlord and the Tenant entered into a written fixed-term tenancy agreement lasting until May 31, 2023. The Residential Property is a rented room in a house. Rent was \$650.00 due on the first day of the month. A security deposit of \$650.00 was required and paid.

Landlord's Evidence and Submissions

- [4] The Landlord submitted that the Tenant advised her on April 4, 2023 that she intended to vacate the apartment at the end of April. The Landlord submitted that the Tenant vacated on April 29, 2023.
- [5] The Landlord submitted that she told the Tenant that rent must still be paid for the month of May or she must find a new tenant to move in for May. The Landlord submitted text messages in another language to the Tenant with a handwritten translation, saying that the Tenant would need to find a new tenant.
- [6] The Landlord submitted that a new tenant was not found and that the tenancy agreement ended on May 31, 2023. The Landlord further submitted that the Tenant did not clean the Residential Property when she left.
- [7] The Representative testified that the Landlord was told by the Tenant that the Landlord could keep the security deposit as payment for May's rent. The Representative testified that there was no written agreement between the parties to this effect.

Tenant's Evidence and Submissions

- [8] The Tenant submitted that she moved out on April 30, 2023. The Tenant submitted that she did not receive any notice from the Landlord that the security deposit would be retained.

Analysis

- [9] The Officer notes subsections 40(1), (2), (3), (4), and 55.(3) 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 fixed-term tenancy

(3) *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.*

- [10] The Officer notes that in 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.
- [11] The Officer finds that the tenancy agreement ended on May 31st, 2023, based upon subsection 55.(3) 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.
- [12] 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*.

- [13] Based on the Representative's testimony, the Officer finds that there was no agreement in writing between the Tenant and Landlord for the Landlord to keep the Tenant's security deposit to pay for rent owing from the month of May. 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 therefore triggers section 40.(4) of the *Act*.
- [14] 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

- [15] The Application is allowed.
- [16] The Landlord shall pay the Tenant double the security deposit.
- [17] The Landlord shall pay the Tenant \$1,300.00 on or before September 18, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$1,300.00 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.