

Introduction

- [1] On May 23, 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.

- [2] On August 22, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants and the Landlord participated.

Issue to be Decided

- i. Are the Tenants entitled to a return of the security deposit?

Summary of the Evidence

- [3] On October 1, 2022, the Tenants and the Landlord entered into a written, fixed-term rental agreement for the Residential Property. The Residential Property consists of a room and shared common areas within a house. Rent was \$1,000.00 per month due on the first day of the month. The Tenants paid the Landlord the first and the last month's rent at the start of the tenancy. A security deposit of \$250.00 was paid. The Tenants vacated the Residential Property on March 31, 2023.

Tenants' Evidence and Submissions

- [4] P.K. stated before the Tenants moved in they had to pay \$1,000.00 for first month's rent, \$1,000.00 for last month's rent, and \$250.00 for a damage deposit. The Landlord kept \$1,000.00 for last month's rent and the \$250.00 security deposit. The Tenants would like the \$1,250.00 returned to them. G.S. stated the Tenants paid the last month's rent in March 2023 so they should get the initial \$1,000.00 payment for last month's rent returned.
- [5] P.K. stated they cleaned before they moved out. There were several people living in the house and everyone put garbage under the stairs. The Landlord was away on vacation so no one was cleaning the house. P.K. stated the window was broken from the outside and it wasn't their fault. P.K. stated there was already damage and scratches in the house. P.K. stated they should get the \$250.00 damage deposit back.
- [6] G.S. stated the Tenants gave D.P. notice on March 7, 2023, that the Tenants would be vacating the Residential Property on March 31, 2023. D.P. was representing the Landlord as the Landlord was out of the country.

Landlord's Evidence and Submissions

- [7] The Landlord stated the Tenants initially paid \$1,000.00 for first month's rent, \$1,000.00 for last month's rent, and \$250.00 for a damage deposit. The Landlord kept \$1,000.00 for last month's rent and the \$250.00 security deposit. She stated the Tenants only told her they were leaving three days before they moved out. She stated they did not give 30-day's notice before they moved out, so she kept the last month's rent for improper notice. She kept the \$250.00 damage deposit for damages caused by the Tenants.

- [8] The Landlord stated the Tenants had a business in the house and numerous vehicles were coming and going, which damaged the driveway. The Tenants caused damage to the garage with their vehicle. The Tenants left garbage behind when they moved out. There were scratches on the wall and a hole in the ceiling caused by the Tenants. There were stains on the floor in the Tenants' bedroom which were difficult to clean. There was a window damaged by the Tenants which will cost \$800.00 to fix.
- [9] The Landlord stated she did not serve the Tenants any paperwork stating that she would be keeping the last month's rent or the damage deposit. She stated D.P. notified the Tenants through text message the day after the Tenants moved out that she would be keeping the money. The Landlord stated G.S. threatened her the day after the Tenants moved out and the Landlord had to call the police.

Analysis

- [10] The Tenants are seeking a return of the security deposit (\$250.00) and a return of the initial last month's rent payment (\$1,000.00). The Landlord is seeking to retain the security deposit for damages and cleaning and the initial last month's rent payment for improper notice.

Overpayment of Security Deposit

- [11] Subsections 14.(1),(3),(4),(5) of the *Act* state:

- (1) *A landlord may, in accordance with this Act and the regulations, require a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.*
- (3) *A landlord shall not require or accept a security deposit that is greater than*
- (a) *in the case of a tenancy agreement where the rent is paid weekly, the equivalent of one week's rent; and*
- (b) *in any other case, the equivalent of one month's rent.*
- (4) *Where a landlord accepts a security deposit that is greater than the amount permitted under subsection (3), the tenant may deduct the overpayment from rent or make an application to the Director under section 75 to recover the overpayment.*
- (5) *Where a landlord receives money or other value from a tenant that exceeds the amount of rent payable in respect of the rental unit, the excess money or value*
- (a) *shall be considered a security deposit; or*
- (b) *where the excess money or value, as a security deposit, would exceed the amount permitted under subsection (3), shall be considered partial payment of the next rent payment required under the tenancy agreement.*

- [12] The Tenants initially paid \$1,000.00 for last month's rent as well as \$250.00 for a security deposit. As the *Act* does not allow the Landlord to collect the last month's rent from the Tenants at the beginning of the tenancy, subsection 14.(5) states that the \$1,000.00 payment shall be considered a security deposit, which is equivalent to one month's rent, as per subsection 14.(3)(b).
- [13] As the security deposit cannot exceed one month's rent, then the \$250.00 payment would be considered an overpayment as per subsection 14.(4). As the tenancy agreement has ended and the overpayment cannot be deducted from the rent, the Officer finds the Tenants are entitled to a return of the overpayment in the amount of \$250.00.

Security Deposit

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

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

[15] Section 110 of the Act states:

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.

[16] The tenancy agreement ended on March 31, 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 had not returned the security deposit and had not filed an 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 \$2,000.00, pursuant to subsection 40.(4) of the *Act*.
- [20] Furthermore, the Officer finds that the Tenants are entitled to a return of the \$250.00 overpayment of the security deposit.

Conclusion

- [21] The Application is allowed.
- [22] The Landlord shall pay the Tenants double the security deposit (\$2,000.00) and the overpayment of the security deposit (\$250.00), totaling \$2,250.00, on or before September 30, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed.
- B. The Landlord shall pay the Tenants double the security deposit (\$2,000.00) and the overpayment of the security deposit (\$250.00), totaling \$2,250.00, on or before September 30, 2023.

DATED at Charlottetown, Prince Edward Island, this 25th 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.