

Introduction

- [1] On June 7, 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 31, 2023.
- [2] On August 30, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant participated in the hearing. The Landlord did not participate. The Officer called and emailed the Landlord before proceeding with the hearing.

Issue to be Decided

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

Summary of the Evidence

- [3] The Tenant testified that on July 1, 2022, the Landlord and the Tenant entered into a written one-year fixed-term tenancy agreement. The Residential Property is a room in a duplex. Rent was \$520.00 due on the first day of the month. A security deposit of \$520.00 was required and paid. Due to interest, the security deposit has since accrued to \$525.38.

Landlord's Evidence and Submissions

- [4] The Landlord did not submit any evidence.

Tenant's Evidence and Submissions

- [5] The Tenant submitted into evidence a Form 8 Notice of Intention to Retain Security Deposit (the "Notice") issued to her by the Landlord on June 4, 2023. The Form 8 stated that the Tenant vacated the Residential Property on May 31, 2023, and that the Landlord would be retaining the security deposit. The form stated that the Tenant was responsible for paint damage, damage to the blinds, and did not clean the rental unit before vacating. The Form 8 listed repainting costs as \$800.00, cleaning costs of \$25.00, and costs to install the blinds of \$25.00, resulting in a claim for the entirety of the security deposit.
- [6] The Tenant submitted that she was not responsible for damage to the rental unit. The Tenant testified that the damage to the walls was already there when she moved in. The Tenant submitted photographs of the rental unit, including photographs of damages to the walls.
- [7] The Tenant testified that she did not clean the rental unit before vacating, and that the cleaning fee of \$25.00 was reasonable.

Preliminary Matter

- [8] The Officer notes subsections 40.(1), (2), (3), and (4) 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.

[9] The Officer notes that the Landlord served the Tenant with the previous Notice applicable under the *Rental of Residential Property Act*, RSPEI 1988, c R-13.1, rather than clause (e) of the new Form 2B Landlord Application to Determine Dispute, applicable under the new *Act*. The Officer further notes that while the Landlord served the Notice on the Tenant four days after the end of the tenancy agreement, it did not serve the Application on the Director, pursuant to sub-subsection 40.(1)(b) of the *Act*. Is the Notice that was served on the Tenant valid?

[10] The Officer notes the application of section 30 of the *Interpretation Act*, RSPEI 1988, c I-8 ("*Interpretation Act*"), which states:

Effect of deviation from specified form

Where an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if

- (a) the deviations do not affect the substance;
- (b) the deviations are not likely to mislead; and
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.

[11] The Officer notes that the relevant section on the current Form 2B is clause (e), which states:

To make a claim against the security deposit pursuant to s. 40.(1)(b) of the Act

[12] The Officer finds that while the Landlord did not use the current Form 2B, the application of the *Interpretation Act* allows the Notice to proceed under clause (e) of the current Form 2B. The Officer finds that the Tenant was not prejudiced by the use of the previous notice. The Officer finds that the Tenant was aware of the reasons for the Notice and was given the opportunity to make full answer and defence.

- [13] The Officer further finds that the Landlord's lack of service of the Notice the Director is overcome as the Tenant filed the Application within 15 days of the end of the tenancy, allowing for the merits of the dispute to be heard at the hearing. For these reasons, the Officer finds that subsection 40.(4) of the *Act* is not triggered.

Analysis

- [14] 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.
- [15] Based on the undisputed evidence of the Tenant, the Officer finds that the Landlord has failed to establish its claim to retain the entirety of the security deposit. The Officer notes that the Landlord did not provide any evidence of damage to the rental unit. The Officer further notes the Tenant's testimony that the damage to the walls in the rental unit existed prior to her tenancy.
- [16] The Officer notes the Tenant's testimony that the cleaning fee of \$25.00 was reasonable as she did not clean the rental unit prior to vacating. As such, \$25.00 of the security deposit shall be retained by the Landlord.
- [17] The Officer finds that the Tenant is entitled to a partial return of the security deposit in the amount of \$500.38.

Conclusion

- [18] The Application is allowed in part.
- [19] The Landlord shall pay the Tenant \$500.38 on or before September 30, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$500.38 on or before September 30, 2023.

DATED at Charlottetown, Prince Edward Island, this 1st day of September, 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.