

## Introduction

- [1] On June 13, 2023 the Tenants filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking a return of the remainder of the Tenants' security deposit. The tenancy ended on May 31, 2023.
- [2] On September 7, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and one of the Tenants ("I.H.") participated in the hearing.

## Issue to be Decided

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

## Summary of the Evidence

- [3] On June 1, 2021, the Landlord and the Tenants entered into a written one-year fixed-term tenancy agreement. The tenancy agreement then converted to a month-to-month agreement. The Residential Property is one-half of a duplex. Rent was \$1,650.00 due on the first day of the month. A security deposit of \$1,650.00 was required and paid.

### Landlord's Evidence and Submissions

- [4] The Landlord testified that he performed a walkthrough of the rental unit with the Tenants at the beginning of the tenancy where it was observed that the rental unit was clean and undamaged.
- [5] The Landlord testified that a walkthrough was performed with the tenants at the end of the tenancy on May 31, 2023. The Landlord testified that the Tenants left the rental unit in an unclean condition beyond the standard of reasonable wear and tear. The Landlord testified that he retained \$100.00 from the security deposit based on the time it took to clean the rental unit. The Landlord testified that this was a conservative number and that he would have been justified in retaining a significantly higher amount. The Landlord submitted photographs of surfaces and fixtures inside the rental unit.
- [6] The Landlord testified that he did not make an application to claim against the Tenants' security deposit within fifteen days of the end of the tenancy.

### Tenants' Evidence and Submissions

- [7] The Tenants submitted that the Landlord was overly critical in the final walkthrough and that retaining the \$100.00 was unjustified. I.H. testified that the Landlord was attempting to hold the Tenants to a standard beyond reasonable wear and tear.
- [8] I.H. further testified that the Landlord retaining part of the security deposit could have been due to the Tenants not wanting to allow a certain individual to be given access to the rental unit for a showing on one occasion.
- [9] I.H. further testified that the security deposit should have been returned to the Tenants with interest, pursuant to the *Act*.

## Analysis

- [10] 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.*

- [11] 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.
- [12] The Officer finds that the tenancy ended on May 31, 2023. The Officer finds that it is immaterial that the Tenants made the Application prior to 15 days elapsing from the end of the tenancy. The Landlord was required to either return the entirety of the security deposit to the Tenants or serve a Landlord Application to Determine Dispute (Form 2B) to retain all or part of the security deposit on the Tenants within 15 days of the end of the tenancy. The Officer finds that the Landlord did not do either.
- [13] The Officer finds that the Landlord returned \$1,550 of the security deposit to the Tenants within fifteen days of the end of the tenancy, pursuant to sub-subsection 40.(1)(a) of the *Act*. However, the Landlord did not file an application with the Rental Office to retain the remaining \$100.00 of the security deposit, as required by sub-subsection 40.(1)(b) of the *Act*.
- [14] The Officer finds that the evidence does not suggest that subsections 40.(2) or 40.(3) of the *Act* 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* regarding the \$100.00 retained by the Landlord.

- [15] The Officer finds that the Tenants are entitled to a return of the outstanding amount of the security deposit and that the Landlord shall pay the Tenants double the amount of the retained portion of the security deposit pursuant to subsection 40.(4) of the *Act*, in the amount of \$200.00.
- [16] The Officer further finds that the Landlord did not return the security deposit with interest, pursuant to sub-subsection 40.(1)(a) of the *Act*. The Officer notes that based on the wording of subsection 40.(4) of the *Act*, when a security deposit amount is doubled and returned to the Tenant, interest is not also applied to it. Therefore, interest only applies to the \$1,550.00 of the security deposit which was already returned to the Tenants. The Landlord shall also pay the Tenants interest accrued in the amount of \$18.30.

**Conclusion**

- [17] The Application is allowed.
- [18] The Landlord shall pay the Tenants double the retained portion of the security deposit.
- [19] The Landlord shall pay the Tenants \$218.30 on or before October 9, 2023.

**IT IS THEREFORE ORDERED THAT**

- A. The Landlord shall pay the Tenants \$218.30 on or before October 9, 2023.

**DATED** at Charlottetown, Prince Edward Island, this 8th day of September, 2023.

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(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.