

Introduction

- [1] On June 15, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2A) (the “First Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a return of the security deposit (Docket No. 23-451).
- [2] On June 21, 2023 the Landlord file a *Landlord Application to Determine Dispute* (Form 2B) (the “Second Application”) with the Rental Office seeking to retain the security deposit (Docket No. 23-464).
- [3] All Applications and Notices were served on the parties.
- [4] On August 30, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant participated at the hearing. The Landlord did not participate at the hearing.

Issue to be Decided

- i. Is the Tenant entitled to a return of the security deposit or is the Landlord entitled to retain the security deposit?

Summary of the Evidence

- [5] On December 23, 2022 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. The fixed term went from January 1, 2023 to April 30, 2023 and converted to a month-to-month agreement. Rent was \$2,100.00 due on the first day of the month. A security deposit of \$2,000.00 was required and paid.

Landlord’s Evidence and Submissions

- [6] The Landlord did not provide any evidence and did not provide any submissions at the hearing.

Tenant’s Evidence and Submissions

- [7] The Tenant testified that he gave the Landlord notice on May 4, 2023 that he was vacating at the end of the month. The Tenant stated that he vacated the Residential Property on May 31, 2023. The Tenant testified that he paid May 2023 rent in full and that the Landlord did not return his security deposit. The Tenant testified that he cleaned the Residential Property and left it in an ordinarily clean state. The Tenant testified that the Landlord through text message said he would return the security deposit, but he still has not returned it. The Tenant submitted into evidence photographs of the Residential Property. The Tenant submitted into evidence text message conversations with the Landlord. The Tenant testified that on May 11, 2023 the Landlord informed him that he found a new tenant for June 1, 2023. The Tenant testified that the Landlord did not return on his security deposit or file an application with the Rental Office within 15 days of the end of the tenancy agreement.

Analysis

- [8] The Officer notes that 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. 2022, c.88, s.110.

[9] The Officer further notes that subsections 40.(1), (2), (3) and (4) of the *Act* states:

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.*

[10] The Officer finds that based on the undisputed evidence that the Tenant provided notice on May 4, 2023 to vacate the Residential Property on May 31, 2023. The Officer notes that the tenancy agreement was a month-to-month at the time and that the Tenant was required to give one-month notice. However, the Officer finds that the evidence establishes that the Landlord mitigated and on May 11, 2023 found a new tenant for June 1, 2023. Therefore, the Officer finds that the tenancy agreement ended and the Tenant vacated the Residential Property on May 31, 2023.

[11] The Officer finds that the Landlord had 15 days from the end of the tenancy agreement to either return the security deposit to the Tenant or file an application with the Rental Office. The Landlord filed the Second Application on June 21, 2023 (21 days after the end of the tenancy agreement). The Officer finds that subsection 40.(1) of the *Act* requires the Landlord to file the Second Application no later than June 15, 2023. Further, the Officer notes that the evidence does not suggest that subsections 40.(2) or 40.(3) of the *Act* apply in this case. The Officer finds that the Landlord did not comply with subsection 40.(1) of the *Act* and was not exempted under subsections 40.(2) or 40.(3) of the *Act*, as a result, subsection 40.(4) of the *Act* is triggered.

[12] The Tenant is entitled to a return of the security deposit, the Landlord shall not make a claim against the security deposit and shall pay the Tenant double the amount of the security deposit pursuant to subsection 40.(4) of the *Act*.

Conclusion

[13] The First Application is allowed.

[14] The Second Application is denied.

[15] The Landlord shall pay the Tenant double the security deposit.

[16] The Landlord shall pay the Tenant \$4,000.00 on or before October 11, 2023.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$4,000.00 on or before October 11, 2023.

DATED at Charlottetown, Prince Edward Island, this 11th day of September, 2023.

(sgd.) Cody Burke

Cody Burke
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.