

Introduction

- [1] On July 17, 2023 and August 16, 2023 the Tenants filed a *Tenant Application to Determine Dispute* (Form 2As) (the “Applications”) with the Residential Tenancy Office (the “Rental Office”) seeking a return of the security deposit and recovery of overpayment of the security deposit. Two of the Tenants are seeking \$1,000.00 in overpayment of the security deposit and the other tenant is seeking \$600.00 in overpayment. One of the Tenants is seeking their return of the security deposit as well.
- [2] All Applications and Notices were served on the parties.
- [3] On August 31, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). Two of the Tenants participated at the hearing. The Landlord participated at the hearing.

Issue to be Decided

- i. Are the Tenants entitled to recovery of overpayment of the security deposit?
- ii. Is the Tenant entitled to a return of his security deposit?

Summary of the Evidence

- [4] The Officer notes that the Landlord is a tenant who has a tenancy agreement with the Residential Property owner. The Landlord sublets rooms in the Residential Property. The property owner was not part of the hearing. The Landlord entered into three separate tenancy agreements for rooms in the Residential Property. The details are as follows:

P.S. entered into a written fixed term agreement with the Landlord for July 1, 2023 to June 30, 2024. Rent was \$1,000.00 due on the first day of the month. A security deposit of \$2,000.00 was required and paid. P.S. vacated the Residential Property on July 31, 2023.

R.S. entered into a written fixed term agreement with the Landlord for June 1, 2023 to May 31, 2024. Rent was \$1,000.00 due on the first day of the month. A security deposit of \$2,000.00 was required and paid. R.S. was expected to vacate on August 31, 2023.

S.S. entered into a written fixed term agreement with the Landlord for June 1, 2023 to May 31, 2024. Rent was \$1,200.00 due on the first day of the month. A security deposit of \$1,800.00 was paid. S.S. was expected to vacate on August 31, 2023.

Tenants' Evidence and Submissions

- [5] The Tenants' testified that they were evicted from the Residential Property, and they are vacating the Residential Property because of the eviction. One of the tenants vacated on July 31, 2023 and the other two tenants were planning to vacate the Residential Property by August 31, 2023. The Tenants' testified that each of them paid the Landlord more than one months' rent for their security deposits. The Tenants' testified that they spoke with the property owner and the property owner informed them that the Landlord was not allowed to sublet the Residential Property.

Landlord Evidence and Submissions

- [6] The Landlord admitted to accepting the rents and security deposits as disclosed in the evidence. The Landlord testified that this is the rental agreement, which the parties agreed to enter into. The Landlord testified that he intends to return the security deposit, but was waiting until all the Tenants vacated the Residential Property. Further, the Landlord testified that he needed to fix a pipe in the Residential Property and he needed to complete that before returning the security deposits. The Landlord testified that his bank account is frozen and he has limited transactions.

Analysis

- [7] With regard to Issue i: *Are the Tenants entitled to recovery of overpayment of the security deposit?*

- [8] The Officer notes that subsections 14.(3) and (4) of the *Act* states:

Limits on amount of security deposit

- (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.*

Tenant may deduct overpayment of security deposit

- (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.*

- [9] The Officer notes that the Landlord's argument relies on the premise that the parties entered into a tenancy agreement and that the terms of the agreement were agreed upon. The Officer finds that the Landlord's argument is not compelling. Further, the Officer notes that the provision in the tenancy agreement regarding how much the security deposit would be for each of the Tenants is contrary to sub-subsection 14.(3)(b) of the *Act*. The Officer notes that section 5 of the *Act* states:

This Act cannot be avoided

Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.

- [10] Notwithstanding the Tenants entering into the tenancy agreement and paying the Landlord the agreed upon security deposit amount, the Landlord cannot rely upon this provision as it is contrary to the *Act*, and, therefore, null and void pursuant to section 5 of the *Act*.

- [11] The Officer finds that based on the evidence and testimony of the parties that the Tenants paid more than they were statutorily required to pay. Therefore, the Tenants are entitled to recover the overpayment of the security deposit pursuant to subsection 14.(4) of the *Act*. The Officer breaks down the overpayment as follows:

- P.S. is entitled to \$1,000.00 returned for overpayment of the security deposit;
- R.S. is entitled to \$1,000.00 returned for overpayment of the security deposit; and
- S.S. is entitled to \$600.00 returned for overpayment of the security deposit.

- [12] With regard to Issue ii: *Is the Tenant entitled to a return of the security deposit?*

[13] 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.*

[14] The Officer finds that one of the Tenants (P.S.) vacated the Residential Property on July 31, 2023. The other two tenants remained in the Residential Property as of the date of the hearing. The Tenant (P.S.) stated that he requested the Landlord return his security deposit but the Landlord did not. The Tenant (P.S.) testified that he did not get an application from the Landlord or any update.

[15] The Officer finds that the Tenant vacated the Residential Property on July 31, 2023. The evidence establishes that the Landlord accepted the Tenant's notice. Further, the evidence establishes that the Landlord in a text message conversation stated that: "*I have to check the room, it's good enough, I will connect the lady, and ask her check the room again, and give back the deposit.*" The Officer finds that the Landlord had 15 days from July 31, 2023 to either return the security deposit to P.S. or file an application with the Rental Office. The Landlord did neither.

[16] The Officer finds that subsection 40.(1) of the *Act* requires the Landlord to file an application or return the security deposit. Further, the Officer notes 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 did not comply with section 40 of the *Act*. As a result, subsection 40.(4) is triggered.

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

Conclusion

[18] The Applications are allowed.

[19] The Landlord shall pay the Tenants the following amounts:

The Landlord shall pay the Tenant (P.S.) \$1,000.00 for overpayment and double the security deposit in the amount of \$2,000.00 for a total amount of \$3,000.00 forthwith;

The Landlord shall pay the Tenant (R.S.) \$1,000.00 for overpayment of the security deposit forthwith; and

The Landlord shall pay the Tenant (S.S.) \$600.00 for overpayment of the security deposit forthwith.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenants the following amounts forthwith:

- The Landlord shall pay the Tenant (P.S.) a total amount of \$3,000.00.
- The Landlord shall pay the Tenant (R.S.) a total amount of \$1,000.00.
- The Landlord shall pay the Tenant (S.S.) a total amount of \$600.00.

B. A certified copy of this Order may be filed with the Court and enforced by Sheriff Services.

DATED at Charlottetown, Prince Edward Island, this 13th 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.