

Introduction

- [1] On July 17, 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 security deposit.
- [2] The Application and the Notice were served on the parties.
- [3] On September 5, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant's representative participated at the hearing. The Landlord did not participate.

Issue to be Decided

- i. Is the Tenant entitled to a return of the security deposit?

Summary of the Evidence

- [4] On April 1, 2023 the Landlord and the Tenant entered into a written month-to-month tenancy agreement for a room in the Residential Property. The Landlord is a tenant who has an independent tenancy agreement with the property owner. Rent was \$685.00 due on the first day of the month. A security deposit of \$350.00 was required and paid.

Tenant's Evidence and Submissions

- [5] The Tenant's representative (the "Representative") testified that the Landlord has not returned the security deposit to the Tenant. The Representative testified that the Landlord had her contact information. The Representative submitted into evidence numerous screenshots of text message conversations between the parties, along with a photograph of the receipt of the security deposit being paid. The Representative testified that the Landlord informed the Tenant on June 19, 2023 that he had to vacate. The Representative testified that the Tenant vacated the Residential Property and that the tenancy agreement was terminated on June 27, 2023.

Landlord's Evidence and Submissions

- [6] The Landlord did not participate at the hearing. The Landlord did not provide any evidence and did not provide any oral and/or written submissions as it relates to the Application.

Analysis

- [7] 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.

[8] 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.*

[9] The Officer notes the following points as it relates to the undisputed evidence and testimony provided by the Representative. The Officer notes that the tenancy agreement was a month-to-month agreement, which the Landlord requested the Tenant vacate. The Tenant complied despite any evidence that the Tenant was served the required Form 4A or Form 4B notice of termination. The Tenant paid rent and had no outstanding arrears at the time of vacating the Residential Property and that the tenancy ended on June 27, 2023.

[10] Further, the Officer notes that the evidence suggests that on July 8, 2023 the parties had a text message conversation regarding the security deposit. In summary, the text message conversation found on pages 25-29 of the evidence package outlines the Representative requesting the security deposit be returned, the Landlord claimed he attempted to contact the Tenant without success, and that the Landlord dropped the security deposit in a sealed envelope to social assistance with the Tenant's name on the envelope. On July 10, 2023 the text message conversation continued and the Representative claimed she went to social assistance and that no envelope was left for the Tenant.

- [11] The Officer finds that the Landlord had 15 days from the end of the tenancy to either return the security deposit to the Tenant or file an application with the Rental Office. The Officer finds that the undisputed evidence suggests the Landlord did neither. The Officer finds that the Landlord did not provide any additional evidence, submissions or testimony to assist in clarifying the conversation between the parties on July 8, 2023 and July 10, 2023. The Officer finds that the evidence does not suggest that subsections 40.(2) and/or 40.(3) of the *Act* apply in this case.
- [12] The Officer finds that the Landlord did not comply with subsection 40.(1) of the *Act*. Further, the Officer finds that the Landlord did not provide any evidence or submissions to assist the Officer to considering section 41 of the *Act*. Section 41 of the *Act* states:

Landlord may retain security deposit

Despite any other provisions of this Act, where a tenant has not provided an address to a landlord in accordance with clause 40.(5)(a) within six months after the end of the tenancy, and the landlord has made reasonable efforts to repay the security deposit in accordance with subsection 40.(5) without success,

- (a) *the landlord may keep the security deposit; and*
- (b) *the right of the tenant to the return of the security deposit is extinguished.*

- [13] Therefore, the Officer finds that subsection 40.(4) of the *Act* is triggered. The Tenant is entitled to a return of the security deposit, the Landlord shall not make a claim against the security deposit and the Landlord shall pay the Tenant double the amount of the security deposit.

Conclusion

- [14] The Application is allowed.
- [15] The Landlord shall pay the Tenant double the security deposit.
- [16] The Landlord shall pay the Tenant \$700.00 forthwith.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$700.00 forthwith.

DATED at Charlottetown, Prince Edward Island, this 15th 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.