

## Introduction

- [1] On July 5, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking:

*To request a return of the security deposit.*

- [2] On July 10, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord Application was filed seeking:

*To make a claim against the security deposit.*

- [3] The Landlord Application was not accepted by the Rental Office as it was filed past the 15-day deadline as prescribed by subsection 40.(1) of the *Act*.

- [4] On September 11, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlords participated.

## Issue to be Decided

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

## Summary of the Evidence

- [5] On September 1, 2022, the Tenant and ("M.O.") entered into a written, fixed-term tenancy agreement for the Residential Property with the Landlords. The Residential Property consists of a single-family house. Rent was \$1,650.00 per month due on the first day of the month. A security deposit of \$825.00 was paid by each tenant. The Tenant vacated the Residential Property on May 31, 2023. M.O. had vacated the Residential Property in December 2022.

## Tenant's Evidence and Submissions

- [6] The Tenant stated there was a small amount of damage to the Residential Property when she left, so she understood that she would lose some of her damage deposit. On June 30, 2023, the Landlord sent the Tenant an email stating they were keeping the entire security deposit for damage to a chair and table. The Tenant replied that the Landlord's calculations were incorrect and the Tenant was owed \$106.25 plus interest. She stated the Landlords returned \$106.25 of the security deposit plus interest, which was \$8.53.
- [7] The Tenant stated the Landlords are now claiming more damages were incurred by the Tenant. She stated that the Landlords have filed too late and she is requesting the remainder of her security deposit back in the amount of \$718.45 pursuant to "*clause 40, subsection 4*" of the *Act*.

## Landlord's Evidence and Submissions

- [8] The Landlord stated he did not notice some of the damages to the Residential Property until after the Tenant had vacated for a while. In June of 2023 the Landlord noticed damage to a table and chair. The Landlord also found some of his tools had been damaged and an oil spill in the shed and driveway. The Landlord stated that the Tenant's boyfriend moved in after M.O. had left. The Landlord stated the Tenant should be responsible for the electrical bill from February 2023 to May 2023 as her boyfriend was not given permission to move in. The Landlord submitted a break down of his costs into evidence.

**Analysis**

- [9] The Tenant is seeking a return of the remainder of the security deposit in the amount of \$718.45. The Landlords are asking to retain the remainder of security deposit for damages caused by the Tenant and for part of the electricity bill from February 2023 to May 2023.

**Security Deposit**

- [10] Subsections 40.(1), (2), (3) and (4) of the Act state:

***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 the security deposit.*

- [11] Section 110 of the Act states:

*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.*

- [12] The *Act* states that a landlord has 15 days from the end of the tenancy agreement to return or make a claim against the security deposit as required by subsection 40.(1) of the *Act*. In this case, the Landlord did neither. The Officer notes that the Landlord did return \$106.25 to the Tenant on June 30, 2023, which was more than 15 days after the tenancy agreement ended on May 31, 2023.
- [13] Furthermore, the Officer finds that the evidence does not suggest that subsections 40.(2) or 40.(3) apply in this case. Therefore, the Officer finds that the Landlord has not complied with section 40 of the *Act* and, as a result, section 40.(4) of the *Act* applies.
- [14] The Officer finds that the Tenant is entitled to a return of the security deposit and that the Landlord shall pay the Tenant double the amount of the security deposit, in the amount of \$1,650.00, minus \$114.78 (\$106.25 + \$8.53) which has already been returned to the Tenant, totaling \$1,535.22.

### Conclusion

- [15] The Application is allowed.
- [16] The Landlord shall pay the Tenant double the amount of the security deposit, minus \$114.78, totaling \$1,535.22, on or before October 20, 2023.

### IT IS THEREFORE ORDERED THAT

- A. The Application is allowed.
- B. The Landlord shall pay the Tenant double the amount of the security deposit, minus \$114.78, totaling \$1,535.22, on or before October 20, 2023.

**DATED** at Charlottetown, Prince Edward Island, this 21st day of September, 2023.

(sgd.) Mitchell King  
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Mitchell King  
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.