

Introduction

- [1] On July 20, 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. On July 20, 2023, the Tenants served the Application on the Landlord by email.
- [2] On September 14, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord and both Tenants ("P.C." and "K.T.") participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [3] The Landlord and the Tenants entered into a written fixed-term tenancy agreement from September 1, 2022, until June 30, 2023. The Residential Property is a single detached house. Rent was \$2,200.00 due on the first day of the month. A security deposit of \$2,200.00 was required and paid. The tenancy ended on June 30, 2023.

Tenants' Evidence and Submissions

- [4] The Tenants are seeking the return of the remainder of their security deposit from the Landlord. The Tenants testified that they received \$998.77 from the security deposit, while the Landlord retained the remaining \$1,201.23.
- [5] The Tenants testified that they should be returned the remainder of the security deposit as the Landlord failed to follow the proper procedure for retaining the security deposit under section 40. of the *Act*. The Tenants testified that while they did receive a Form 8, the Landlord did not submit a Form 2B with the Rental Office within fifteen days of the end of the tenancy to claim the security deposit under the new *Act*. The Tenants further testified that they were not returned the security deposit with interest, contrary to the *Act*.
- [6] The Tenants further submitted that the Residential Property was left in a condition that was clean and undamaged within the standard of reasonable wear and tear. The Tenants testified that they hired a professional cleaner to clean the Residential Property prior to vacating. The Tenants submitted a receipt showing payment of \$452.50 for seven hours of professional cleaning. The Tenants further submitted pictures of the interior and exterior of the Residential Property.
- [7] The Tenants acknowledged that the Residential Property was not left in a perfect state of cleanliness. The Tenants acknowledged not having cleaned a number of surfaces, leaving some personal items under furniture, and leaving sand under mattresses. However, the Tenants testified that this met the standard of ordinary cleanliness when taking into consideration reasonable wear and tear. The Tenants testified that the Landlord held them to an unrealistic standard of cleanliness.
- [8] The Tenants testified that they did not damage the Landlord's mattresses or box springs. The Tenants testified that the mattresses were already in rough condition when they moved in. The Tenants testified that they did nothing to damage them during the tenancy. The Tenants further testified that the sheets for the master bedroom bed were in poor condition when they moved in and that they replaced them at their own expense.

Landlord's Evidence and Submissions

- [9] The Landlord testified that the Tenants left the Residential Property in an unclean and damaged condition when they vacated. The Landlord testified that he returned \$998.77 from the security deposit and retained \$1,201.23, although he would have been justified in retaining a larger amount.
- [10] At the time of the hearing, the Landlord submitted a copy of a Form 8 Notice of Intention to Retain Security Deposit, dated July 10, 2023. The Landlord testified that he did not file a Form 2B Landlord Application to Determine Dispute with the Rental Office and that he was unaware of the new forms under the new Act.
- [11] The Landlord submitted that cleaning the Residential Property took him sixteen hours, which he valued at \$25.00 per hour, for a total cost of \$400.00. The Landlord submitted that the Tenants damaged the queen mattress to the extent that it had to be replaced, for a cost of \$515.20, for which a receipt was provided. The Landlord submitted that the queen bed sheets needed to be replaced for a cost of \$72.01, for which a receipt was provided. The Landlord also submitted that the living room required steam cleaning at a cost of \$373.75, for which he submitted an invoice.
- [12] The Landlord submitted that the cleaning performed by the Tenants was entirely insufficient. The Landlord submitted that there was considerable dirt and discarded personal items left under various furniture. The Landlord testified that the Tenants' dogs caused significant messes to the Residential Property. The Landlord testified that this also caused a considerable odour inside the Residential Property. The Landlord submitted photographs of various unclean surfaces in the Residential Property, dog hair, and personal items.
- [13] The Landlord testified that the Tenants put holes in the queen mattress which led to him needing to replace it. The Landlord testified that the mattress and box spring were not damaged when the Tenants moved in. The Landlord submitted photographs of the mattress and a box spring.

Analysis

- [14] 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.*

- [15] 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.
- [16] The Officer finds that the tenancy ended on June 30, 2023. The Officer finds that the Landlord returned \$998.77 of the security deposit to the Tenants within 15 days of the end of the tenancy. Pursuant to subsection 40.(1) of the *Act*, the Landlord was required within 15 days of the end of the tenancy to either return the entirety of the security deposit to the Tenants or make an application to the Director under section 75. of the *Act* claiming against all or part of the security deposit. The Officer finds that the Landlord did not do either.
- [17] The Officer notes that on July 10, 2023, the Landlord served the Tenants with a Form 8 Notice of Intention to Retain Security Deposit applicable under the *Rental of Residential Property Act*, RSPEI 1988, c R-13.1. The Officer finds that the Landlord did not file any application with the Rental Office to retain the remaining \$1,201.23 of the security deposit within 15 days from the end of the tenancy, as required by sub-subsection 40.(1)(b) of the *Act*.
- [18] The Officer further notes that the Tenants' Application for return of the security deposit was made 20 days after the end of the tenancy.
- [19] 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 \$1,201.23 retained by the Landlord.
- [20] 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 \$2,402.46.
- [21] 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 Landlord shall also pay the Tenants interest accrued in the amount of \$27.27.

Conclusion

[22] The Application is allowed.

[23] The Landlord shall pay the Tenants double the retained portion of the security deposit.

[24] The Landlord shall pay the Tenants \$2,429.73 on or before October 30, 2023.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenants \$2,429.73 on or before October 30, 2023.

DATED at Charlottetown, Prince Edward Island, this 29th day of September, 2023.

(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.