

Introduction

- [1] On August 7, 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 remainder of the Tenant's security deposit, although the Application was dated July 24, 2023.
- [2] On September 28, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Landlord and the Tenant participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [3] The Landlord and the Tenant entered into a written one-year fixed-term tenancy agreement on February 1, 2020. The tenancy agreement later converted to a month-to-month tenancy agreement. The Residential Property is one half of a duplex. Rent was \$1,250.00 due on the first day of each month. A security deposit of \$1,250.00 was required and paid.

Landlord's Evidence and Submissions

- [4] The Landlord testified that the Tenant caused bed bug and cockroach infestations in the rental unit due to failing to maintain ordinary cleanliness of the rental unit.
- [5] The Landlord testified that the Tenant had been evicted for failing to maintain ordinary cleanliness, damage to the unit, and an illegal sublet, with an effective vacate date of June 30, 2023. However, the Landlord testified that the Tenant's vacate date was extended to July 15, 2023, on which the Tenant did vacate. The Landlord provided the Tenant with a Form 8 Notice of Intention to Retain Security Deposit on July 20, 2023, which stated that the Landlord would return the Tenant \$382.10 of the security deposit, while the Landlord would retain the remaining \$873.12. The Form 8 stated that this retained amount represented one-half of pest control treatments and the cost for a new key to be cut for an upstairs bedroom. The Form 8 calculated interest accumulated on the security deposit in the amount of \$5.22.
- [6] The Landlord testified that he purchased the Residential Property on July 1, 2021. The Landlord testified that he inspected the Residential Property around that time and found that the rental unit was satisfactorily well maintained by the Tenant at that time. The Landlord testified that the Tenant failed to maintain the cleanliness of the rental unit thereafter. The Landlord submitted a signed letter from a neighbouring tenant stating that the Tenant allowed garbage to overflow on the property and that on one occasion he saw the interior of the Tenant's rental unit and found it in a very unclean state.
- [7] The Landlord testified that he became aware of pest control issues at the Residential Property in the summer of 2022. The Landlord had a pest control company treat the property in August of 2022 and again in May of 2023. The Landlord submitted inspection reports from the pest control company. A report dated August 22, 2022 stated that sanitation in the rental unit was the biggest problem and that food crumbs and grease around the stove needed to be removed as soon as possible. The reports indicated a treatment cost of \$805.00 on August 22, 2022, and \$1,092.50 on May 24, 2023, for a total cost of \$1,897.50.
- [8] The Landlord additionally submitted photographs of the condition of the interior of the rental unit. The Landlord testified that an inspection was not performed with the Tenant on the vacate date.

Tenant's Evidence and Submissions

- [9] The Tenant testified that she did not believe that she was responsible for the pest issues in the rental unit. The Tenant acknowledged some cleanliness issues in the past but testified that she did not bring the pests into the rental unit.
- [10] The Tenant testified that for most of the tenancy, she and her roommates would clean the rental unit every weekend. The Tenant testified that she was away for a significant period of time during which the pests could have been brought into the rental unit. The Tenant further testified that there were no pest issues when she originally moved in.
- [11] The Tenant argued that the photographs submitted by the Landlord were undated and that they were likely taken in 2022 or earlier.

Analysis

- [12] 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.*

- [13] 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.

- [14] The Officer finds that the tenancy ended on July 15, 2023. The Officer finds that the Landlord returned \$382.10 of the security deposit to the Tenant 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 Tenant 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.
- [15] The Officer notes that on July 20, 2023, the Landlord served the Tenant 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 \$873.12 of the security deposit within 15 days from the end of the tenancy, as required by sub-subsection 40.(1)(b) of the *Act*.
- [16] The Officer further notes that the Tenant's Application for return of the security deposit was made 23 days after the end of the tenancy.
- [17] 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 \$873.12 retained by the Landlord.
- [18] The Officer finds that the Tenant is entitled to a return of the outstanding amount of the security deposit and that the Landlord shall pay the Tenant double the amount of the retained portion of the security deposit pursuant to subsection 40.(4) of the *Act*, in the amount of \$1,746.24.

Conclusion

- [19] The Application is allowed.
- [20] The Landlord shall pay the Tenant double the retained portion of the security deposit.
- [21] The Landlord shall pay the Tenant \$1,746.24 on or before October 30, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$1,746.24 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.