

Introduction

- [1] On August 7, 2023, the Tenants 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 the landlord provide the tenancy agreement and/or other information required the Act; and

To request a return of the security deposit.

- [2] On September 28, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two of the three Tenants participated and the Landlord did not participate.

Issues to be Decided

- i. Is the Landlord required to provide a copy of the tenancy agreement to the Tenants?
- ii. Are the Tenants entitled to a return of the security deposit?

Summary of the Evidence

- [3] On November 5, 2022, the Tenants and the Landlord entered into a verbal, six month fixed-term tenancy agreement for the Residential Property. The Residential Property consists of half of an over and under duplex. Rent was \$2,000.00 per month due on the first day of the month. A security deposit of \$2,000.00 was paid. The Tenants vacated the Residential Property on June 30, 2023.

Tenants' Evidence and Submissions

- [4] The Tenants stated the Landlord told the Tenants several times that she would provide them with a paper copy of the tenancy agreement but it was never provided to them. They stated a copy of the tenancy agreement would be helpful for taxes and to prove where they had lived.
- [5] The Tenants stated the Landlord kept the full security deposit of \$2,000.00. The Tenants agreed that the Landlord could keep \$697.00 for the electricity bills, as electricity was not included in the tenancy agreement. The Tenants did not agree that the Landlord should have charged them \$667.00 for deep cleaning, as the property was clean when they left. The Landlord also told them that she was keeping the rest of the security deposit for painting. The Tenants disagree that the Tenants should be charged for painting. The Tenants stated the Landlord was hard to communicate with and they were never served with any forms from the Landlord stating that she was keeping the security deposit.

Landlord's Evidence and Submissions

- [6] The Landlord did not provide any evidence or submissions.

Analysis

Issue i: Tenancy Agreement

- [7] The Tenants are seeking a copy of the tenancy agreement from the Landlord. Subsections 11.(1) and (4) of the Act state:

11.(1) A landlord shall prepare a written tenancy agreement in respect of a tenancy that is entered into on or after the date this Act comes into force.

11.(4) Despite the terms of a tenancy agreement, where a landlord has not complied with subsection (3), the tenant may make an application to the Director for an order requiring the landlord to provide the tenancy agreement and other information referred to in clause (3)(b), if any, to the tenant.

- [8] The Officer notes that the tenancy agreement between the parties began on November 5, 2022. At that time, the *Rental of Residential Property Act* (the “former Act”) was the law with respect to landlord / tenant relationships. Under the former Act, a tenancy agreement could be written or verbal, and there was no requirement for a landlord to provide a tenant with a written copy of a tenancy agreement.
- [9] Subsection 11.(1) of the Act states that a written tenancy agreement is only required in respect of a tenancy that is entered into on or after the date the current Act came into force, which was April 8, 2023. Therefore, the Officer is unable to order the Landlord to provide a copy of the tenancy agreement to the Tenants and this portion of the Application is denied.

Issue ii: Security Deposit

- [10] The Tenants are seeking a return of the security deposit in the amount of \$1,303.00 (\$2,000.00 - \$697.00). The Officer notes that where there is a dispute over a security deposit, it is the Landlord’s burden, or onus to prove, any and all claims made against 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. [emphasis added]*

- [12] 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.*

- [13] The Officer notes that the Tenants agreed to allow the Landlord to retain \$697.00 for electricity bills, pursuant to subsection 40.(3)(a) of the *Act*. Despite it needing to be in writing, the Officer accepts the Tenants' submissions that there was an agreement.
- [14] The *Act* states that a landlord has 15 days from the end of the tenancy agreement to return or make a claim against all or part of the security deposit as required by subsection 40.(1) of the *Act*. In this case, the Landlord did neither.
- [15] Furthermore, the Officer finds that the evidence does not suggest that subsections 40.(2) or 40.(3) apply with regards to the remaining \$1,303.00 of the security deposit. There is no previous order, the Tenants did not agree, and there is no evidence that the Landlord attempted to comply with this section. 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* is triggered.
- [16] The Officer finds that the Landlord cannot make claim against the security deposit and the Tenants are entitled to a partial return of the security deposit and that the Landlord shall pay the Tenants double the amount of the remaining security deposit, in the amount of \$2,606.00 (\$1,303.00 x 2).

Conclusion

- [17] The Application is allowed part.
- [18] The Landlord shall pay the Tenants double the amount of the remaining security deposit, in the amount of \$2,606.00, forthwith upon receipt of this Order.

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed in part.
- B. The Landlord shall pay the Tenants double the amount of the remaining security deposit, in the amount of \$2,606.00, forthwith upon receipt of this Order.

DATED at Charlottetown, Prince Edward Island, this 3rd day of October, 2023.

(sgd.) Mitchell King
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.