

Introduction

- [1] On July 19, 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 Tenants' security deposit.
- [2] On September 26, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord, a Representative for the Landlord ("M.H."), and one of the Tenants ("R.F.") participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [3] R.F. testified that in October 2011, the Tenants entered into a verbal month-to-month tenancy agreement with a prior landlord for the Residential Property. The Residential Property is a single detached house. Rent was \$850.00 due on the first day of the month. The parties dispute whether a security deposit was paid.

Tenants' Evidence and Submissions

- [4] R.F. testified that the Tenants vacated the Residential Property during the first week of June 2023. R.F. testified that there have been three landlords for the Residential Property during the time she has resided there. "G.W." was the original landlord when she moved in, "G.F.H." acquired the Residential Property in 2015, and the Landlord acquired the Residential Property in 2018.
- [5] R.F. testified that she paid \$600.00 as a security deposit to G.W. when the Tenants first moved in. R.F. testified that the security deposit was paid in cash. R.F. testified that she did not receive a receipt for the security deposit and that she has no written record of the security deposit. R.F. further testified that G.W. has since passed away.
- [6] R.F. further testified that the Landlord was angry when the Tenants informed him that they would be leaving the Residential Property and that the refusal to return the security deposit may be related. R.F. testified that the Residential Property was not clean when they moved in, but they left the Residential Property in good condition upon vacating.

Landlord's Evidence and Submissions

- [7] The Landlord testified that there was no security deposit paid to a previous owner of the Residential Property. The Landlord testified that he contacted a representative of G.F.H. to inquire whether they were aware of the Tenant having ever paid a security deposit. The Landlord testified that he was told that no security deposit was paid.
- [8] The Landlord further testified that he contacted the lawyer he used to purchase the Residential Property in 2018. The Landlord testified that he was told that there was no accounting for a security deposit held in trust for the Tenants to be carried over when the Residential Property was purchased.
- [9] The Landlord further testified that the Tenants caused various damage to the Residential Property, including water damage to the basement. The Landlord further submitted that the Tenants took appliances from the Residential Property that did not belong to them.

Analysis

[10] The Officer notes the following sections of the Act:

14. Receipt

(6) Upon receipt of a security deposit, the landlord shall give the tenant a written receipt stating the amount of the security deposit, the date of receipt, and the rental unit and residential property to which it applies.

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.*

110. Transitional - security deposits

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 deposits apply

[11] The Officer notes that this is the Tenants' Application and that the current Landlord denies the existence of the security deposit. The Officer notes that it is the Tenants' burden or onus to prove, on a balance of probabilities, that a security deposit was paid to a landlord for the Residential Property.

- [12] Based on the totality of the evidence, the Officer finds that the Tenants have failed to establish that a security deposit was paid to G.W., the prior landlord for the Residential Property. The Officer notes that G.W. is now deceased and the Landlord testified that he was told by a representative of G.F.H. that they have no knowledge of a security deposit having been paid. The Officer notes that the Tenants did not provide any written or documentary evidence to support the assertion that there was ever a security deposit paid.
- [13] The Officer notes that submissions on damage to the rental unit and removal of appliances were not relevant to the Application and the Officer makes no finding on them.
- [14] The Application is denied.

Conclusion

- [15] The Application is denied.

IT IS THEREFORE ORDERED THAT

- A. The Application is denied.

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