

Introduction

- [1] On May 19, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2A) (the "Tenant's Application") with the Residential Tenancy Office (the "Rental Office") seeking a return of the security deposit (Docket No. 23-399).
- [2] On May 28, 2023 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2B) (the "Landlord's Application") with the Rental Office, seeking to retain the security deposit (Docket No. 23-498).
- [3] All documents were properly served on the parties.
- [4] On September 21, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing themselves, with two witnesses. The Tenant did not appear, and did not have any person representing them.

Issue to be Decided

- i. Is the Tenant entitled to the return of the security deposit or is the Landlord entitled to retain the security deposit?

Summary of the Evidence

- [5] In September 2022 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. The Residential Property is a rental unit situated in a 20-unit apartment building. Rent was \$1,750.00 due on the first day of the month. A security deposit was \$1,750.00, however, the Tenant's portion is \$583.33.

Landlord's Evidence and Submissions

- [6] The Landlord testified that the Tenant vacated on April 30, 2023. The Landlord testified that she continued communication with the Tenant regarding the damage and security deposit. The Landlord testified that the plumber completed the assessment and work and provided an accurate cost. The Landlord testified that she informed the Tenant of the amount she was seeking to retain and the conversation broke down. The Landlord testified that the Tenant filed the Tenant's Application after not agreeing to pay the damage amount. The Landlord testified that she filed the Landlord's Application shortly after she learned of the Tenant's Application.
- [7] The Landlord testified that she is seeking the full amount of the Tenant's security deposit (\$583.33). The Landlord testified that the Tenant vacated the Residential Property earlier than the end of the fixed term agreement. The Landlord testified that there was plumbing issues, and the Residential Property was unclean. The Landlord testified that the plumbing issue was fixed on May 12, 2023 and she informed the Tenant of the cost associated with that. The Tenant was not willing to pay the amount discussed and communications stopped.
- [8] The Landlord's witnesses provided testimony regarding going to the rental unit and seeing the state of the rental unit. The Landlord's witnesses testified that there was a leak from a clogged sink and this was what the plumber needed to fix. The Landlord's witness testified that the rental unit was left dirty and messy.

Tenant's Evidence and Submissions

- [9] The Tenant did not appear at the hearing and did not provide any testimony. The Tenant did submit some documents and five videos into evidence.

Analysis

[10] The Officer notes that subsections 40.(1), (2) and (3) of the Act state:

Return of security deposit

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

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

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.*

[11] Further, the Officer notes that subsections 28.(4) and (5) of the Act state:

Tenant responsible for undue damage

A tenant of a rental unit shall repair, in a good and professional manner, undue damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Tenant not responsible for reasonable wear and tear

A tenant is not required to make repairs for reasonable wear and tear to the rental unit or common areas of the residential property.

[12] The Officer makes comment that in such matters where there is a dispute over the security deposit, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all claims made against the security deposit.

[13] To begin, the Officer makes comment that the general rule surrounding security deposits is that a landlord *must* either return the security deposit in full plus interest to the tenant or file an application with the Rental Office within 15 days from the end of the tenancy pursuant to subsection 40.(1) of the Act. In this case, the evidence suggests that the Tenant filed the Tenant's Application on the 19th day after the end of the tenancy and the Landlord filed the Landlord's Application on the 28th day after the tenancy ended.

- [14] However, subsections 40.(2) and (3) of the *Act* provides exceptions to the general rule. In this case, the Officer finds that the undisputed testimony of the Landlord, and the Landlord's witnesses provides the Officer with consideration of these exceptions, specifically, sub-subsection 40.(3)(b) of the *Act*. Sub-subsection 40.(3)(b) of the *Act* states: "*After the end of the tenancy, the Director orders that the landlord may retain the amount.*" This language is fairly broad and provides the Officer with some flexibility when determining if the Landlord is exempted from the general rule.
- [15] The Officer finds that based on the undisputed testimony of the Landlord and her witnesses that the Landlord and the Tenant were communicating regularly after the end of the tenancy, in good faith, with one another regarding the security deposit. Once the Landlord had a better idea of the cost associated with the damage and cleaning, she informed the Tenant the amount she was looking to retain from the security deposit. The Tenant denied that offer and communication ceased to continue. The Tenant filed the Tenant's Application after the 15-day window, triggering the Landlord to follow suit with the Landlord's Application being filed 28 days after the tenancy concluded.
- [16] The Officer finds that it would not be appropriate in this case to strictly hold the Landlord to the 15 day deadline required in subsection 40.(1) of the *Act*. The Landlord and the Tenant were negotiating in good faith, and those negotiations broke down. In such a scenario the Tenant cannot rely on the punitive measures prescribed in subsection 40.(4) of the *Act* and attempt to regain the security deposit without the case being determined on its merits.
- [17] The Officer finds it appropriate in this case to provide the Landlord with the opportunity for the case to be heard on its merits. The Officer finds that the Landlord is in compliance with section 40. of the *Act* due to being exempted under sub-subsection 40.(3)(b) of the *Act*. The Officer makes this finding being the Landlord filed an application with the Rental Office once she was aware that the negotiations were no longer continuing and that the Tenant filed the Tenant's Application.
- [18] Additionally, the Landlord submitted documentary evidence and witness testimony to assist to establishing her claim against the security deposit. Therefore, the Officer finds that the Landlord is exempted from subsection 40.(1) of the *Act* and has provided sufficient evidence to establish her claim to retain the security deposit. The Landlord is entitled to retain the Tenant's portion of the security deposit in the amount of \$583.33.

Conclusion

- [19] The Tenant's Application is denied.
- [20] The Landlord's Application is allowed.
- [21] The Landlord shall retain \$583.33 from the security deposit.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall retain \$583.33 from the security deposit.

DATED at Charlottetown, Prince Edward Island, this 12th day of October, 2023.

(sgd.) Cody Burke
Cody Burke
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.