

Introduction

- [1] On August 11, 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 Tenant’s security deposit.
- [2] The Landlord returned the security deposit to the Tenant on August 19, 2023. The Tenant then amended the Application to seek return of the outstanding accrued interest on the security deposit and double the amount of the security deposit, pursuant to subsection 40.(4) of the *Act*.
- [3] On August 11, 2023, the Tenant served the Landlord the Application by email in accordance with subsection 100.(1) of the *Act*.
- [4] On October 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant and a representative for the Landlord (“M.M.”) participated in the hearing.

Issue to be Decided

- i. Must the Landlord pay double the security deposit to the Tenant?

Summary of the Evidence

- [5] The Tenant entered into a written one-year fixed-term tenancy agreement with the previous landlord on July 30, 2020. The tenancy agreement later converted to a month-to-month tenancy agreement. The Landlord acquired the Residential Property on May 17, 2023. The Residential Property is a single unit in a multi-unit apartment building. Rent was \$1,100.00 due on the first day of each month. A security deposit of \$600.00 was required and paid.

Tenant’s Evidence and Submissions

- [6] The Tenant testified that on March 31, 2023, the Landlord told him and his roommates to vacate the rental unit by June 30, 2023, so that the Landlord could make large-scale repairs to the bathroom. The Tenant testified that the Landlord later gave permission for the vacate date to be moved to July 4, 2023, at which time they did vacate.
- [7] The Tenant testified that shortly after he vacated the rental unit he sent a text message to the Landlord to request the return of the security deposit. The Tenant testified that the Landlord did not respond to this message.

Landlord’s Evidence and Submissions

- [8] M.M. testified that she had a plumber inspect the Residential Property in March of 2023, which revealed serious water leaks from the Tenant’s rental unit bathroom into the rental unit below. M.M. testified that the Tenant and his roommates were given three months’ notice to vacate the rental unit, in order to make large-scale repairs.
- [9] M.M. testified that she allowed the Tenant and his roommates to move the vacate date from June 30, 2023, to July 4, 2023. M.M. testified that she was very preoccupied with various things in her life and forgot to return the security deposit within fifteen days from the end of the tenancy. M.M. testified that she did not recall receiving a text message from the Tenant soon after the tenancy ended to request that the security deposit be returned.

- [10] M.M. testified that she first attempted to return the security deposit by e-transfer on August 10, 2023, however, technical issues prevented the payment from going through until August 19, 2023. M.M. acknowledged that the Landlord never filed any application to retain any of the Tenant's security deposit.
- [11] M.M. testified that extensive cleaning and repairs were required when she took possession of the rental unit. M.M. testified that the cleaning and repair costs incurred by the Tenant's occupation of the rental unit far exceed the amount of the security deposit. The Landlord submitted various photographs showing the condition of the interior of the rental unit.

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 made against the security deposit of \$600.00 plus \$16.78 in accrued interest as of the date of this order, November 6, 2023. The total amount of the security deposit in question is \$616.78.

- [14] The Officer finds that the tenancy ended on July 4, 2023 when the Landlord unlawfully evicted the Tenant for repairs. The Officer finds that while the Landlord returned the security deposit in the amount of \$600.00 to the Tenant on August 19, 2023, and first attempted to return it to the Tenant on August 10, 2023, this was more than 15 days from the end of the tenancy. Further, the Officer finds that the Landlord did not file an application with the Rental Office to retain the security deposit within 15 days from the end of the tenancy and did not pay accrued interest.
- [15] Pursuant to subsection 40.(1) of the *Act*, the Landlord is 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 in accordance with the timeline set out in the *Act*.
- [16] The Officer finds that the evidence does not suggest that subsections 40.(2) or 40.(3) of the *Act* apply in this case. The Officer finds that the Landlord has not complied with section 40. of the *Act*, and therefore triggers subsection 40.(4) of the *Act* requiring the Landlord to pay double the amount of the security deposit.
- [17] The Officer further finds that while the Landlord returned the original amount of the security deposit in the amount of \$600.00 on August 19, 2023, the Landlord did not pay the Tenant the accrued interest of \$11.64 on the original security deposit.
- [18] The Landlord shall pay the Tenant an additional \$600.00 pursuant to sub-subsection 40.(4)(b) of the *Act*, and \$16.78 in accrued interest, for a total amount of \$616.78.

Conclusion

- [19] The Application is allowed.
- [20] The Landlord shall pay the Tenant \$616.78 forthwith.
- [21] **Order LD23-511 was served on the parties by email on November 6, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$616.78 forthwith.

DATED at Charlottetown, Prince Edward Island, this 6th day of November, 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.