

Introduction

- [1] On August 23, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking:

To request the return of the security deposit.

- [2] On October 31, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant participated and the Landlord did not participate. All documents were properly served on the parties.

Issue to be Decided

- i. Is the Tenant entitled to a return of the security deposit?

Summary of the Evidence

- [3] On December 1, 2022, the Tenant and the Landlord entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property consisted of a single-family house. Rent was \$1,300.00 due on the first day of the month. A security deposit of \$1,300.00 was paid. The Tenant vacated the Residential Property on July 29, 2023.

Tenant's Evidence and Submissions

- [4] The Tenant stated she notified the Landlord on July 19, 2023, that she was breaking her lease early and that she was vacating on July 29, 2023. She stated she moved in on December 1, 2022, but she was told not to drink the well water due to two failed water tests. In February 2023, the Landlord told her another water test would be completed but no test was ever completed.
- [5] The Tenant stated she had to buy water or go to her mother's residence for water for the entire time she lived in the Residential Property. The Tenant stated she had to break her lease because it was getting too expensive to buy water and to pay for gas to drive to her mother's house to get water.
- [6] The Tenant stated she had to go to a hotel during the winter because it was too cold in the house. She stated the pipes froze in the house and the Landlord sent someone with a torch to thaw out the plastic pipes. The repairperson was not able to thaw out the pipes and the Tenant was left without water until the pipes thawed out.
- [7] The Tenant stated she asked the Landlord for a return of the security deposit. She stated the Landlord told her that the Landlord would be keeping the security deposit because the Tenant did not provide at least one month's notice.

Landlord's Evidence and Submissions

- [8] The Landlord did not submit any evidence or participate in the hearing.

Analysis

Issue i: Is the Tenant entitled to a return of the security deposit?

- [9] The Officer begins by referencing the relevant law for the Application. Subsections 40.(1), (2), (3) and (4) 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.*

Consequences of non-compliance

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.*

- [10] As no evidence was provided by the Landlord as to when the Residential Property was re-rented or what steps were taken to find another tenant, the Officer finds the end of the tenancy agreement as the vacate date of July 29, 2023. 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.

- [11] Furthermore, the Officer finds that the evidence does not suggest that subsections 40.(2) or 40.(3) apply with regards to the security deposit. There is no previous order, the Tenant 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 applies.

[12] Section 14.(9) of the *Act* states:

Interest rate

A landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord.

[13] The Officer adjusts the interest accrued to the date this Order is issued to \$27.60.

[14] The Officer finds that the Landlord cannot make claim against the security deposit and the Landlord shall pay the Tenant double the amount of the security deposit, plus interest, in the amount of \$2,627.60.

Conclusion

[15] The Application is allowed.

[16] The Landlord shall pay the Tenant double the amount of the security deposit, plus interest, in the amount of \$2,627.60, forthwith upon receipt of this Order.

[17] Order LD23-513 was served on the parties by email on November 6, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant double the amount of the security deposit, plus interest, in the amount of \$2,627.60, forthwith upon receipt of this Order.
- B. A certified copy of Order LD23-513 may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

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