

Introduction

- [1] On August 9, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office") requesting a return of the security deposit and interest.
- [2] The Tenant is seeking the return of the security deposit in the amount of **\$1,600.00** plus interest.
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with subsection 100.(1) of the *Act*.
- [4] On October 31, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing themselves. The Representative appeared, representing the Landlord. The Representative was assisted with a translator and the Witness.

Issue to be Decided

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

Summary of the Evidence

- [5] On August 1, 2022 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. The Tenant vacated the Residential Property on July 1, 2023. The parties did not dispute that the tenancy ended on July 1, 2023. Rent was \$1,600.00 due on the first day of the month. A security deposit of \$1,600.00 was required and paid.

Tenant's Evidence and Submissions

- [6] The Tenant submitted 16 pages of documentary evidence, including a copy of the tenancy agreement, e-mail and text communications between the Tenant and the Representative and the Witness.
- [7] The Tenant testified that after he vacated on July 1, 2023 he e-mailed the Representative on July 2, 2023 asking about the security deposit. The Tenant testified that he did not receive a response from the Representative until July 22, 2023 where he was informed the Landlord was retaining the security deposit. The Tenant testified that on July 6, 2023 while waiting for a response he texted the Representative about having his security deposit returned. The Tenant testified that on July 8, 2023 he received a response from his text message; the Representative's family member responded that the intention was to return the security deposit, but the Representative was away on business.
- [8] The Tenant testified that he returned the keys to the Witness (who is the Property Manager) and that no inspection was completed. The Tenant testified that the Representative and the Witness never informed him of any damage or issues that he may have caused. The Tenant denied causing any damage to the Residential Property beyond what normally would be considered wear and tear.

Landlord's Evidence and Submissions

- [9] The Landlord submitted 9-pages of documentary evidence, including a written submission, invoices, and photographs of the Residential Property.
- [10] The Representative testified that the Witness did inform the Tenant about the damage to the Residential Property. The Representative testified that the Witness inspected the Residential Property after the Tenant vacated. The Representative testified that the Tenant installed a washing machine without consent, and the installation caused damage.

- [11] The Representative testified that on August 31, 2023 he received a full invoice for the cost of damages. The Representative admitted to not knowing that he had to file an application with the Rental Office within 15 days of the end of tenancy. The Landlord is seeking to retain the full amount of the security deposit and interest to cover the damages, cleaning and painting required after vacancy.
- [12] The Witness testified to support the Representative's testimony. The Witness testified that he did inspect the Residential Property alone, but did inform the Tenant of the damage he witnessed.

Analysis

- [13] The Officer begins by referencing the relevant law for the Application. 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 the 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.*

- [14] Further, the Officer refers to Order LR23-69, paragraph 15. where the Island Regulatory and Appeals Commission (the "Commission") makes these comments:

- [15] *Subsections 40(2) and (3) are the only exceptions to the provisions contained in section 40. The Commission finds that there is no exemption from the rigours of section 40...*

- [15] The Officer finds that the Tenant is entitled to a return of the security deposit and interest. The Officer finds that the tenancy ended July 1, 2023. That means the Landlord had until July 15, 2023 to either return the security deposit and interest or file an application with the Rental Office to retain the security deposit. The Officer finds that the evidence establishes that the Landlord did neither.

- [16] Further, the Officer finds that the facts of this case do not present an application to the exceptions pursuant to subsections 40.(2) and/or (3) of the *Act*. The Officer also finds that the Landlord's argument of ignorance does not shield the Landlord from, as the Commission described as *the rigours of section 40*. The Officer finds that the Landlord did not comply with subsection 40.(1) of the *Act*, and is not exempted under subsection 40.(2) and/or (3) of the *Act*. Such non-compliance triggers subsection 40.(4) of the *Act*. The Officer finds that the Tenant is entitled to a return of their security deposit, including double the security deposit and interest accrued on the principle amount.

Conclusion

- [17] The Application is allowed. The Officer's calculations are as follows:

Item	Amount
Security Deposit	\$1,600.00
Interest (08/01/22 – 11/07/23)	\$34.08
Security Deposit (Double Awarded)	\$1,600.00
Total Compensation Awarded	\$3,234.08

- [18] 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.

- [19] The Officer adjusts the interest accrued to the date this Order is issued.
- [20] The Landlord shall pay the Tenant \$3,234.08 on or before November 30, 2023
- [21] **Order LD23-516 was served to the parties by e-mail on November 7, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$3,234.08 on or before November 30, 2023.

DATED at Charlottetown, Prince Edward Island, this 7th day of November, 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.