

Introduction

- [1] On August 31, 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 part of the Tenant's security deposit.
- [2] On August 31, 2023, the Tenant served the Landlord the Application by registered mail in accordance with subsection 100.(1) of the *Act*.
- [3] On November 7, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). A representative for the Tenant ("J.G.") and a representative for the Landlord ("J.M.") participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] The Tenant entered into a written one-year fixed-term tenancy agreement with the Landlord on July 1, 2022. The Residential Property is a single unit in a multi-unit apartment building. Rent was \$1,300.00 due on the first day of each month. A security deposit of \$650.00 was required and paid.

Tenant's Evidence and Submissions

- [5] J.G. testified that the Tenant vacated the Residential Property on July 1, 2023. J.G. testified that the Landlord returned \$450.00 of the security deposit, plus accrued interest, to the Tenant within 15 days of the end of the tenancy, however, the Landlord retained \$200.00 from the security deposit as a cleaning fee.
- [6] J.G. testified that the Tenant left the rental unit in a condition that was reasonably clean and undamaged, except for reasonable wear and tear. J.G. testified that any damage to the rental unit was very minor and within the meaning of reasonable wear and tear as contemplated in the *Act*.
- [7] J.G. testified that the Landlord held the Tenant to a standard that went beyond reasonable wear and tear. J.G. testified that the Landlord wanted the rental unit to be "move-in ready" for the next tenant. J.G. argued that the Landlord's claims were unreasonable and that the Tenant should be returned the remainder of the security deposit.

Landlord's Evidence and Submissions

- [8] J.M. testified that he did not perform an inspection of the rental unit with the Tenant at the conclusion of the tenancy on July 1, 2023. J.M. testified that he received a phone call from the tenants who moved into the rental unit after the Tenant vacated, which disclosed some damage and uncleanliness. J.M. testified that there was some dirt, possible mould, and grass left in the rental unit, but it was otherwise fairly clean.
- [9] J.M. testified that he returned \$450.00 of the security deposit plus accrued interest to the Tenant within 15 days of the end of the tenancy, however, he retained \$200.00 from the security deposit as a cleaning fee. J.M. testified that a professional cleaner employed by the Landlord cleaned the rental unit for two to three hours. J.M. testified that there was also some minor painting done around some trim in the rental unit.
- [10] J.M. testified that he did not file an application with the Rental Office to retain \$200.00 from the Tenant's security deposit. J.M. testified that he was unaware this was required under the *Act*.

Analysis

[11] 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.*

[12] 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 remainder of the security deposit held by the Landlord in the amount of \$200.00.

[13] The Officer finds that the tenancy ended on July 1, 2023. The Officer finds that the Landlord returned part of the security deposit in the amount of \$450.00, plus accrued interest in the amount of \$8.10, to the Tenant within 15 days of the end of the tenancy. However, the Officer finds that the Landlord did not return the remaining \$200.00 of the security deposit to the Tenant and did not file an application with the Rental Office to retain the remainder of the security deposit within 15 days from the end of the tenancy.

[14] 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.

- [15] 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 retained portion of the security deposit.
- [16] The Landlord shall pay to the Tenant the remaining \$200.00 of the security deposit, and an additional \$200.00 pursuant to sub-subsection 40.(4)(b) of the *Act*, for a total amount of \$400.00.

Conclusion

- [17] The Application is allowed.
- [18] The Landlord shall pay the Tenant \$400.00 on or before November 30, 2023.
- [19] **Order LD23-517 was served on the parties by email on November 8, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$400.00 on or before November 30, 2023.

DATED at Charlottetown, Prince Edward Island, this 8th 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.