

Introduction

- [1] On October 17, 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] On October 17, 2023, the Rental Office provided the Landlord with a copy of the Application.
- [3] On November 9, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and a representative for the Landlord ("T.J.") 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] On August 31, 2022, the Tenant and the Landlord entered into a written fixed-term tenancy agreement from September 4, 2022 to August 31, 2023. At the end of the fixed-term the tenancy converted to a month-to-month agreement. The rental unit is a single unit of a triplex. Rent was \$1,800.00 due on the first day of the month. A security deposit of \$1,500.00 was required and paid.

Tenant's Evidence and Submissions

- [5] The Tenant submitted three pages of documentary evidence which included copies of text message exchanges with T.J. The undated text messages show the Tenant requesting the return of the security deposit and disputing T.J.'s claim that the Tenant damaged the dishwasher and the rental unit.
- [6] The Tenant testified that he is entitled to the return of his security deposit and that he did not cause any damage to the rental unit. The Tenant denied ever having used the dishwasher, aside from using it for dish storage purposes. The Tenant argued that the Landlord's lack of photos of damage implies that the rental unit was not damaged.
- [7] The Tenant further argued that if the Landlord found an issue with the rental unit, he should have been given an opportunity to see the damage and repair it if necessary.

Landlord's Evidence and Submissions

- [8] The Landlord submitted into evidence two pages of written arguments as to why the Landlord should be permitted to retain the security deposit.
- [9] T.J. testified that the Tenant was evicted on September 30, 2023 for illegally subletting the rental unit. T.J. testified that he contacted the Tenant to arrange an inspection of the rental unit for September 30, 2023, but the Tenant did not participate.
- [10] T.J. argued that he entered the rental unit and discovered that it was left in a damaged and unclean condition beyond reasonable wear and tear. T.J. testified that walls, floors and appliances were dirty, and the dishwasher was broken and full of water.

- [11] T.J. testified that a professional cleaning company and an appliance repair company attended the rental unit to perform work. T.J. testified that the cleaning costs were \$431.25 and that the appliance repair costs were not yet determined. The Landlord did not submit any receipts. T.J. testified that the total repair costs are well in excess of the amount of the security deposit. T.J. testified that repair work still needs to be done to the rental unit and that he is incurring further costs as he is unable to rent it in its current condition.
- [12] T.J. acknowledged that he did not return the security deposit or file an application with the Rental Office to claim against the security deposit. T.J. testified that he did not file an application because he did not yet know the total amount of damages he would be claiming as the repairs were incomplete.

Analysis

- [13] The Officer notes that 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.*

- [14] 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 held by the Landlord in the amount of \$1,500.00, plus \$32.26 in accrued interest as of the date of this order, November 10, 2023.

- [15] The Officer finds that the tenancy ended on September 30, 2023. The Officer finds that the Landlord did not return the security deposit to the Tenant and did not file an application with the Rental Office to retain the security deposit within 15 days from the end of the tenancy.
- [16] 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*.
- [17] The Officer finds that based on the evidence presented subsections 40.(2) or 40.(3) of the *Act* do not apply. The Officer finds that the Landlord has not complied with section 40. of the *Act*, and therefore subsection 40.(4) of the *Act* requires that the Landlord pay double the amount of the security deposit.
- [18] The Landlord shall pay the security deposit to the Tenant in the amount of \$1,500.00, accrued interest in the amount of \$32.26, and an additional \$1,500.00 pursuant to sub-subsection 40.(4)(b) of the *Act*, for a total amount of \$3,032.26.

Conclusion

- [19] The Application is allowed.
- [20] The Landlord shall pay the Tenant \$3,032.26 on or before November 30, 2023.
- [21] **Order LD23-522 was served on the parties by email on November 10, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$3,032.26 on or before November 30, 2023.

DATED at Charlottetown, Prince Edward Island, this 10th 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.