

Introduction

- [1] On September 19, 2023, the Tenants filed a Tenant Application to Determine Dispute (Form 2A) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a return of the Tenants’ security deposit.
- [2] On September 19, 2023, the Tenants served the Landlords with the Application by email in accordance with subsection 100.(1) of the *Act*.
- [3] On November 16, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). One of the Tenants (“M.D.”) and one of the Landlords (“B.R.”) participated in the hearing.

Issue to be Decided

- i. Are the Tenants entitled to the return of the security deposit?

Summary of the Evidence

- [4] On May 11, 2023, the Tenants and the Landlords entered into a written fixed-term tenancy agreement for the Residential Property from June 1, 2023, to August 31, 2023. The Residential Property is a single detached house. Rent was \$3,500.00 due on the first day of the month. A security deposit of \$1,750.00 was required and paid.

Tenants’ Evidence and Submissions

- [5] The Tenants submitted 28 pages of documentary evidence, consisting of two pages of written arguments, a copy of an email exchange with the Landlords, and the signed tenancy agreement.
- [6] M.D. testified that the Landlords returned \$1,000.00 of the security deposit to the Tenants after the tenancy ended, but retained \$750.00 from the security deposit, plus accrued interest, contrary to the *Act*. M.D. argued that the Landlords were required within 15 days from the end of the tenancy to either return the entirety of the security deposit to them or file an application with the Rental Office claiming against the security deposit, which they failed to do.
- [7] M.D. testified that there was no agreement made with the Landlords for the Landlords to retain any portion of the security deposit. M.D. argued that based on the *Act*, it is irrelevant if the Residential Property was not left in a satisfactory condition because the Landlords did not apply to retain part of the security deposit within the required timeline.

Landlords’ Evidence and Submissions

- [8] The Landlords submitted 7 pages of documentary evidence, consisting of copies of email and text message exchanges with the Tenants, and photographs of the condition of the Residential Property.
- [9] B.R. testified that the Landlords returned \$1,000.00 of the security deposit to the Tenants on September 5, 2023, and retained the remaining \$750.00 of the security deposit. B.R. acknowledged that the Landlords failed to make an application with the Rental Office to claim against the security deposit within 15 days from the end of the tenancy. B.R. testified that the Landlords were extremely busy at that time and it was an unfortunate omission.

- [10] B.R. testified that the Tenants left the Residential Property in an unsatisfactory condition. B.R. testified that there were messes from food and alcohol spills, garbage bags and various items left behind, doors and windows were left open, and damage to the walls and floor of the Residential Property. The Landlords submitted photographs that showed numerous garbage bags left inside the Residential Property, as well as minor damage to walls.
- [11] B.R. argued that while the Landlords did not follow the proper process under the Act, the photographs and circumstances of this case support a finding that the Landlords should be entitled to retain part of the security deposit.

Analysis

- [12] 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.*

- [13] 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...*

- [14] The Officer finds that the Tenants are entitled to a return of the security deposit and interest. The Officer finds that the tenancy ended August 31, 2023. That means the Landlords had until September 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 Landlords did neither.

- [15] 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 finds that the Landlords 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 Tenants are entitled to a return of their security deposit, including double the security deposit and interest accrued on the principle amount.

Conclusion

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

Item	Amount
Retained Portion of Security Deposit	\$750.00
Interest (06/01/23 – 11/17/23)	\$20.26
Retained Portion of Security Deposit (Double Awarded)	\$750.00
Total Compensation Awarded	\$1,520.26

- [17] 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.

- [18] The Officer adjusts the interest accrued to the date this Order is issued.
- [19] The Landlords shall pay the Tenants \$1,520.26 on or before December 15, 2023.
- [20] **Order LD23-532 was served on the parties by email on November 17, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall pay the Tenants \$1,520.26 on or before December 15, 2023.

DATED at Charlottetown, Prince Edward Island, this 17th 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.