

Introduction

- [1] On September 20, 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:

Other: sent \$1,000.00 as a holding deposit...and should be returned.

- [2] On November 7, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and two Landlords participated.
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the Act.

Issue to be Decided

- i. Is the Tenant entitled to a return of the \$1,000.00 deposit?

Summary of the Evidence

- [4] On July 31, 2023, the Landlords and the Tenant entered into a verbal fixed-term tenancy agreement for the Residential Property. The Residential Property consists of a condominium unit in a multi-unit building. Rent was to be \$2,000.00 due on the first day of the month. A "deposit" of \$1,000.00 was paid. The Tenant did not move into the Residential Property.

Tenant's Evidence and Submissions

- [5] The Tenant stated she was planning on moving to PEI from another province. On July 31, 2023, the Tenant sent a \$1,000.00 "holding deposit" to the Landlords for the Residential Property. The Landlords initially wanted her to send \$4,000.00, but the Tenant could not afford this, so the parties agreed on \$1,000.00. The parties verbally agreed to a four-month tenancy agreement which was to begin on September 1, 2023, and the Tenant would begin paying rent at that time. The Tenant stated two days later she changed her mind in part because of a health condition. The Tenant asked for the \$1,000.00 to be returned but the Landlords refused.

Landlords' Evidence and Submissions

- [6] The Landlords stated the Tenant agreed to a four-month tenancy agreement. The Landlords stated it was for a short-term vacation rental, similar to an Airbnb, and they should not be considered "landlords."
- [7] The Landlords stated the Tenant committed to the agreement on July 31, 2023, and sent a \$1,000.00 "deposit" to the Landlords. Three days later the Tenant informed the Landlords that she would no longer be renting the property and wanted the \$1,000.00 returned. The Landlords refused as the Tenant "renege" on the agreement.
- [8] The Landlords stated they had other applicants who wanted to rent the Residential Property but were turned down after the Tenant was chosen as the successful applicant. The Landlords contacted the other applicants after the Tenant notified them, but the other applicants had already found other accommodations. The Landlords advertised the rental unit on Facebook but they could not find new renters for the Residential Property.
- [9] The Landlords stated the Tenant should also owe the rest of September 2023 rent in the amount of \$1,000.00. The Landlords stated they are no longer trying to re-rent the Residential Property.

Preliminary Matter

- [10] The Landlords stated the rental of the Residential Property was a short-term rental, similar to an Airbnb, and they should not be considered “landlords.” Section 4 of the *Act* defines the various living accommodations that the *Act* does not apply to. The Officer notes that the closest definition to an Airbnb or a short-term rental is defined in subsection 4.(a) of the *Act* which states:

4. This Act does not apply to

(a) temporary accommodation licensed under the Tourism Industry Act R.S.P.E.I. 1988, Cap. T-3.3, except when the temporary accommodation under that Act is provided as accommodation for a guest for a continuous period of two months or more.

- [11] No evidence was presented at the hearing showing that the Residential Property was licensed under the *Tourism Industry Act*. Furthermore, the parties entered into an agreement for four months, which is “a continuous period of two months or more.” Therefore, the Officer finds that the parties had a Landlord / Tenant relationship and had entered into a “tenancy agreement” which is defined in subsection 1.(w) of the *Act* as:

an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and the provision of services and facilities.

Analysis

Issue i: Is the Tenant entitled to a return of the \$1,000.00 deposit?

- [12] Officer begins by referencing the relevant law for the Application. Sections 12 and 14.(1) of the *Act* state:

12. Fees prohibited

(1) A landlord shall not charge a person a fee for

- (a) accepting an application for a tenancy;*
- (b) processing the application;*
- (c) investigating the applicant's suitability as a tenant; or*
- (d) accepting the person as a tenant.*

Deposit

(2) A landlord shall not accept any deposit except as permitted under section 14.

14. Landlord may require security deposit

(1) A landlord may, in accordance with this Act and the regulations, require a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

- [13] The Officer finds that the Tenant has established that she is entitled to a return of the \$1,000.00 deposit. The parties defined the money sent to the Landlord as either a “holding deposit” or a “deposit” for the Residential Property until the Tenant moved in and started paying rent. The Officer notes that this sort of payment is considered a fee prohibited under the *Act*, as subsection 12.(1)(d) of the *Act* prohibits a Landlord from charging a fee for “accepting the person as a tenant.”

- [14] In the alternative, if the Officer was to find that the \$1,000.00 paid to the Landlords was a “security deposit,” then section 40 of the *Act* would apply. The Landlords stated they tried to find another tenant for the Residential Property but were unable to do so, and they are no longer looking for another tenant. The Landlords submitted that the Tenant should owe the Landlords another \$1,000.00 for the rest of the rent for September 2023. Based on the evidence provided by the parties, the Officer finds that the tenancy agreement would have ended no later than September 30, 2023.
- [15] Subsection 40.(1) of the *Act* states that a landlord has 15 days from the end of the tenancy (September 30, 2023) to return or make a claim against all or part of the security deposit. In this case, the Landlords did neither. Therefore, subsection 40.(4) of the *Act* would apply and the Landlords would be required to return the security deposit to the Tenant.
- [16] Subsection 85.(1)(b) of the *Act* states:
- (1) After hearing an application, the Director may make an order*
- (b) Directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord.*

Conclusion

- [17] The Application is allowed.
- [18] The Landlords shall return \$1,000.00 to the Tenant forthwith upon receipt of this Order.
- [19] Order LD23-536 was served on the parties by email on November 17, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall return \$1,000.00 to the Tenant forthwith upon receipt of this Order.
- B. A certified copy of Order LD23-536 may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

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