

## Introduction

- [1] On October 6, 2023, the Subtenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking a return of the Subtenant's security deposit.
- [2] On October 6, 2023, the Subtenant served the Application on the Tenant by email, in accordance with subsection 100.(1) of the Act.
- [3] On November 14, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Subtenant participated in the hearing. The Tenant did not participate in the hearing. The Rental Office telephoned the Tenant, left a voicemail, sent an email, and waited for ten minutes before proceeding with the hearing.

## Issue to be Decided

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

## Summary of the Evidence

- [4] On July 1, 2023, the Subtenant and the Tenant entered into a verbal one-year fixed-term tenancy agreement from July 1, 2023 to July 1, 2024. The rental unit is a single unit of a multi-unit apartment building. Rent was \$625.00 due on the first day of the month. A security deposit of \$400.00 was required and paid.

### Subtenant's Evidence and Submissions

- [5] The Subtenant submitted 21 pages of documentary evidence, including copies of bank notifications for payment of rent and the security deposit to the Tenant, as well as copies of text message exchanges between the Subtenant and Tenant from September 24, 2023, to October 8, 2023.
- [6] The Subtenant testified that he vacated the Residential Property prior to the end of the fixed term due to an injury that forced him to move. The Subtenant testified that he has requested that the Tenant return his security deposit numerous times. The Subtenant testified that despite the Tenant saying he would return the security deposit, he has failed to do so.
- [7] In a text message dated September 25, 2023, the Tenant said to the Subtenant "As SOON as I get new roommates pay rent for October 1. I will give you deposit."
- [8] Another text message from the Tenant later that same day stated "I will get you money as soon as I can buddy".
- [9] A further text message from the Tenant later that day said "The law in Canada says you need to pay for 30 days notice or give me ur deposit. I am choosing to give you deposit back because I am nice and I like you."
- [10] In a text message dated September 27, 2023, the Tenant stated "He moved in before the 1<sup>st</sup> and still hasn't paid me my rent money so what I had of yours I used to pay the rent so I wouldn't become homeless". In another text message dated the same day, the Tenant referred to the "new roommate".

### Tenant's Evidence and Submissions

- [11] The Tenant did not submit any evidence and did not participate in the hearing.

## Analysis

[12] The Officer begins by noting that a tenant-subtenant relationship carries the same rights and obligations for the parties as a landlord-tenant relationship under the *Act*.

[13] Subsections 40.(1), (2), (3), (4), and 55.(3) 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.*

**55. Notice for fixed-term tenancy**

(3). *A tenant may end a fixed-term tenancy by giving the landlord a notice of termination effective on a date that*

- (a) is not earlier than one month after the date the landlord receives the notice;*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and*
- (c) is the day before the day that rent is payable under the tenancy agreement.*

[14] The Officer finds that while the Subtenant did not provide proper notice to end the tenancy pursuant to subsection 55.(3) of the *Act*, the Subtenant's fixed-term tenancy is deemed to have ended on September 27, 2023, due to the Tenant finding a replacement subtenant. In text messages from the Tenant to the Subtenant dated September 27, 2023, the Tenant stated that there was a new roommate who had already moved into the rental unit.

[15] The Officer finds that the Tenant accepted a replacement subtenant into the rental unit by September 27, 2023, at the latest. The Officer finds that this had the effect of severing the fixed-term tenancy agreement with the Subtenant.

[16] 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...*

[17] The Officer finds that the Subtenant is entitled to a return of the security deposit and interest. The Officer finds that the tenancy ended on September 27, 2023. That means the Tenant had until October 12, 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 Tenant did neither.

[18] 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 Tenant 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 Subtenant is entitled to a return of his security deposit, including double the security deposit and interest accrued on the principle amount.

### Conclusion

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

Item	Amount
Security Deposit	\$400.00
Interest (07/01/23 – 11/17/23)	\$3.81
Security Deposit (Double Awarded)	\$400.00
Total Compensation Awarded	\$803.81

[20] 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.*

[21] The Officer adjusts the interest accrued to the date this Order is issued.

[22] The Tenant shall pay the Subtenant \$803.78 on or before December 15, 2023.

[23] **Order LD23-537 was served on the parties by email on November 17, 2023.**

### IT IS THEREFORE ORDERED THAT

A. The Tenant shall pay the Subtenant \$803.78 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.