

Introduction

- [1] On September 21, 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:

To request the return of the security deposit.

- [2] On November 16, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a Tenant witness, and a Landlord 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 remainder of the security deposit?

Summary of the Evidence

- [4] On May 30, 2023, the Tenant and the Landlords entered into a written fixed-term tenancy agreement for the Residential Property, which was to begin on September 1, 2023. The Residential Property consists of a room and shared spaces in a house (the "House"). Rent was to be \$700.00 due on the first day of the month. A security deposit of \$700.00 was paid and \$500.00 has been returned to the Tenant. The Tenant did not move into the Residential Property.

Tenant's Evidence and Submissions

- [5] The Tenant submitted several pages of evidence including copies of messages between the parties and a copy of an e-transfer notice.
- [6] The Tenant stated when she agreed to move into the Residential Property she was told the Landlord would be living in the House, as there were other tenants in the house as well. The Tenant stated she felt safe living there if the Landlord was living there.
- [7] The Tenant stated after she sent her security deposit, the Landlord advised her that he would no longer be living in the House. The Tenant stated she also became aware about some information regarding some other tenants which made her uncomfortable. The Tenant notified the Landlord that she no longer felt safe moving into the Residential Property and she requested a return of the security deposit.
- [8] The Tenant stated the Landlord agreed to terminate the tenancy agreement. The Landlord returned \$500.00 of the security deposit and retained \$200.00. The Tenant stated she is requesting a return of the additional \$200.00.

Landlords' Evidence and Submissions

- [9] The Landlords submitted several pages of evidence including a copy of the tenancy agreement and copies of messages between the parties.
- [10] The Landlord stated there was nothing in the tenancy agreement which stipulated that the Landlord was required to live in the House while the Tenant was residing there. He stated he decided to move out as a business decision so he would not be living with his tenants. The Landlord stated he was transparent with the Tenant and let her know about some of the issues with the other tenants.

- [11] The Landlord stated he retained \$200.00 of the security deposit as the tenant did not provide proper notice. The Landlord stated the tenancy agreement also stated \$200.00 of the security deposit was non-refundable and would be used towards the cost of preparing the Residential Property for another tenant. The Landlord stated the parties agreed to end the tenancy agreement on August 30, 2023. The Landlord stated he was not able to secure another tenant until October 1, 2023, so he missed out on one month's rent.

Analysis

Issue i: Is the Tenant entitled to a return of the remainder of the security deposit?

- [12] The Officer begins by referencing the relevant law for the Application. Clauses 5, 15, and 40, of the Act state:

5. This Act cannot be avoided

Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.

15. Prohibitions respecting security deposits

A landlord shall not

- (c) *require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement.*

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 make an application to the Director under section 75 claiming against the security deposit.*
- (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] Subsection 15.(c) of the *Act* states that a Landlord cannot include as a term of the tenancy agreement which states the Landlord automatically keeps all or part of the security deposit. Section 5 of the *Act* states that a tenant cannot waive their rights, benefits, or protections under the *Act*.

[15] The Officer finds that the Tenant is entitled to a return of the remainder of the security deposit and interest. The Officer finds that the tenancy ended August 30, 2023, which means the Landlord had until September 14, 2023, to either return the remainder of 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 Landlord did neither.

[16] 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 Landlord 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 Tenant is entitled to a return of the remainder of the security deposit with interest, including double the security deposit on the remaining amount.

[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 finds that the Tenant sent the security deposit to the Landlord on August 14, 2023, and adjusts the interest accrued to the date this Order is issued.

Item	Amount
Security Deposit	\$200.00
Interest (08/14/23 – 11/22/23)	\$1.37
Security Deposit (Double Awarded)	\$200.00 x 2 (\$400.00)
Total Compensation Awarded	\$401.37

Conclusion

- [19] The Application is allowed.
- [20] The Landlords shall pay the Tenant double the amount of the remainder of the security deposit, plus interest, in the amount of \$401.37, on or before December 31, 2023.
- [21] Order LD23-543 was served on the parties by email on November 22, 2023.

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall pay the Tenant double the amount of the remainder of the security deposit, plus interest, in the amount of \$401.37, on or before December 31, 2023.
- B. A certified copy of Order LD23-543 may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 22nd 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.