

Introduction

- [1] On October 19, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking the following remedies:

To request the return of the security deposit; and

Other: I am seeking the return of half a month's rent.

- [2] On October 19, 2023, the Tenant served the Landlord with the Application by email, in accordance with subsection 100.(1) of the Act.
- [3] On November 21, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord participated in the hearing.

Issues to be Decided

- i. Is the Tenant entitled to a return of rent?
- ii. Is the Tenant entitled to the return of the security deposit?

Summary of the Evidence

- [4] Around the middle of July 2023, the Tenant and the Landlord entered into a verbal month-to-month tenancy agreement beginning on August 1, 2023, although the commencement was later changed to August 15, 2023. The Residential Property consists of a room rental in a single unit of an apartment building. Rent was \$800.00 per month, payable on the fifteenth day of each month. The parties disputed whether a security deposit was paid.

Tenant's Evidence and Submissions

- [5] The Tenant submitted 12 pages of documentary evidence, including copies of text message exchanges between the Tenant and Landlord and bank records of payments made to the Landlord.
- [6] The Tenant testified that in early July 2023, she saw the Landlord's online advertisement subleasing a room and inquired about renting it. The Tenant testified that she told the Landlord she would not be moving to Prince Edward Island until August 1, 2023. The Tenant testified that she paid the Landlord \$800.00 on July 11, 2023. The Tenant submitted a copy of a bank record showing a payment made to the Landlord on July 11, 2023. The Tenant further testified that she ended up actually moving into the Residential Property around the middle of August 2023, and paid rent for the first time on August 15, 2023. The rental periods therefore began on the fifteenth of each month and ended on the fourteenth of the following month.
- [7] The Tenant testified that the \$800.00 payment she made to the Landlord in July 2023 was a security deposit. The Tenant testified that while the term "security deposit" was never used between the parties regarding this payment, she assumed based on prior experiences that it was a security deposit.
- [8] The Tenant testified that based on an incident that occurred on September 30, 2023, involving the Landlord and the Tenant, the Landlord forced the Tenant to vacate the Residential Property that same day. The Tenant testified that, the Landlord incorrectly got the impression that the Tenant was talking behind the Landlord's back and pointing at her.

- [9] The Tenant testified that the Landlord became angry and told her to vacate the Residential Property that day. A text message from the Landlord to the Tenant on September 30, 2023, stated “[*Tenant’s name*] if your going to talk s*** about me you can get your s*** out tonite.” Another text message from the Landlord to the Tenant later that day stated “I News my keys.” The Tenant testified that this second text message was a typo and was a request for the return of the keys. A text message from the Tenant to the Landlord on October 4, 2023, stated “I would like to recover the half of my rent. I think it’s only fair since you were the one who gave me less than a days notice to move out.”
- [10] The Tenant testified that, based on the Landlord’s angry demands, she vacated the Residential Property on September 30, 2023.
- [11] The Tenant submits that as she left the Residential Property on September 30, 2023, and she had paid rent for the rental period from September 15, 2023 to October 14, 2023, half of her last rent payment should be returned.

Landlord’s Evidence and Submissions

- [12] The Landlord submitted one page of written arguments as documentary evidence.
- [13] The Landlord testified that the \$800.00 payment paid by the Tenant to the Landlord around July 2023 was a reservation fee. The Landlord testified that in order to hold the Residential Property for the Tenant from July 2023 until the Tenant’s move-in date in August 2023, she required the \$800.00 payment. The Landlord testified that the payment was not rent or a security deposit, as it is not her practice to require security deposits.
- [14] The Landlord testified that on September 30, 2023, she and the Tenant were at a store. The Landlord testified that she saw the Tenant and two other individuals speaking with one another and pointing at the Landlord. The Landlord was offended and text messaged the Tenant, as described above.
- [15] The Landlord testified that she originally just warned the Tenant that she would need to move out if the Tenant continued to talk behind her back, however, when the Landlord saw the Tenant packing, she requested that the Tenant return her keys.
- [16] The Landlord submits that the Tenant did not provide sufficient notice that she would be vacating the Residential Property, and therefore, she should be entitled to retain the entirety of rent for the period of September 15, 2023 to October 14, 2023.

Analysis

Issue i: Is the Tenant entitled to a return of rent?

- [17] The Officer notes the application of subsection 61.(3), and sub-subsections 85.(1)(b) of the *Act*.

61. Period of notice

(3) *A notice of termination under this section shall end the tenancy effective on a date that is*

- (a) *not earlier than one month after the date the notice is received; and*
- (b) *the day before the day that rent is payable under the tenancy agreement.*

85. Powers of the Director

(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.*

- [18] The Officer finds based on the testimony of the Tenant that she believed that she had been evicted by the Landlord on September 30, 2023 and had to leave that day due to the Landlord's text message, which stated "[Tenant's name] if your going to talk s*** about me you can get your s*** out tonite." The Officer notes the text message sent from the Tenant to the Landlord on October 4, 2023, which stated "I think it's only fair since you were the one who gave me less than a days notice to move out."
- [19] The Officer finds that the tone of the Landlord's text message was threatening and aggressive. The Officer finds that it was reasonable for the Tenant to believe that she was evicted and forced to leave on September 30, 2023. The Officer finds that the Landlord's argument, that she did not intend to evict the Tenant on September 30, 2023, is not compelling. The Officer notes the Landlord's request on September 30, 2023 that the Tenant return the keys, which the Landlord accepted.
- [20] The Officer finds that the tenancy agreement ended on September 30, 2023, due to an unlawful eviction by the Landlord. The Officer notes that to evict a tenant for cause, the vacate date cannot be earlier than one month after the eviction notice is given, pursuant to subsection 61.(3) of the *Act*. The Officer finds that the Landlord contravened this subsection of the *Act* by unlawfully evicting the Tenant on September 30, 2023, without the prescribed notice period.
- [21] The Officer notes that the Director has the power to order the Landlord to repay money to the Tenant, pursuant to sub-subsection 85.(1)(b) of the *Act*.
- [22] The Officer finds that the tenancy ended on September 30, 2023 and that rent had been paid by the Tenant for the rental period of September 15, 2023 to October 14, 2023. The Officer notes that the monthly rent of \$800.00 per month is equivalent to a daily rate of \$26.67 per day. Therefore, the Officer finds that the Tenant is entitled to a return of rent in the amount of \$373.38 for rent paid for the fourteen days after the tenancy ended, from October 1, 2023 to October 14, 2023.
- [23] The Landlord shall return rent to the Tenant in the amount of \$373.38, on or before December 15, 2023.

Issue ii: Is the Tenant entitled to the return of the security deposit?

- [24] Subsections 20.(2), 40.(1), (2), (3) and (4), and sub-subsection 85.(1)(b) of the *Act* state:
- 20. Fees charged by landlord**
- (2) A landlord may charge a fee for
- (a) the actual cost of replacing keys or other access devices;
 - (b) the actual cost of additional keys or other access devices requested by the tenant;
 - (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
 - (d) an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution;
 - (e) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement; and
 - (f) a service prescribed in the regulations.
- 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.*

85. Powers of the Director

- (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*

[25] The Officer finds that based on the testimony of the parties and the copy of the Tenant's bank record, the Tenant paid the Landlord \$800.00 as a security deposit on July 11, 2023. The Officer notes the definition of a security deposit pursuant to subsection 1.(q) of the *Act*, which states:

1. Definitions

- (q) *"security deposit" means money or any property paid by or on behalf of a tenant to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant respecting the rental unit.*

[26] The Officer finds that despite the Landlord characterizing the \$800.00 payment as a "reservation fee", which would be prohibited pursuant to subsection 20.(2) of the *Act*, the payment meets the definition of a "security deposit" under subsection 1.(q) of the *Act*. The Officer finds that the security deposit was required by the Landlord in order to reserve the Residential Property until the Tenant arrived and began paying monthly rent. The Officer finds that the security deposit was held by the Landlord as security for the performance of an obligation of the Tenant, pursuant to subsection 1.(q) of the *Act*.

[27] The Officer notes the Tenant's testimony that she believed this payment was to be a security deposit. The Officer further notes similarities this payment had with typical security deposits in that it was the amount of one month's rent, and was required prior to the commencement of the tenancy.

[28] The Officer finds that the Tenant is entitled to a return of the security deposit and interest. As stated above, the Officer finds that the tenancy ended on September 30, 2023. That means the Landlord had until October 15, 2023 to either return the security deposit with accrued 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.

[29] 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...*

[30] 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 her security deposit, including double the security deposit and interest accrued on the principle amount.

Conclusion

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

Item	Amount
Security Deposit	\$800.00
Interest (07/11/23 – 11/24/23)	\$7.45
Security Deposit (Double Awarded)	\$800.00
Return of Rent	\$373.38
Total Compensation Awarded	\$1,980.83

[2] 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.

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

[4] The Landlord shall pay the Tenant \$1,980.83, on or before December 15, 2023.

[5] **Order LD23-545 was served on the parties by email on November 24, 2023.**

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$1,980.83, on or before December 15, 2023.

B. A certified copy of **Order LD23-545** may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 24th 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.