

Introduction

- [1] On September 6, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) dated September 5, 2023 (the "Application") with the Residential Tenancy Office (the "Rental Office") requesting a return of the security deposit.
- [2] The Tenant is seeking the return of the security deposit in the amount of **\$1,940.00** plus interest.
- [3] All relevant documents (including the Notice of Hearing and Combined Evidence Package) were properly served to the parties in accordance with subsection 100.(1) of the *Act*.
- [4] On November 14, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing themselves. The Landlord appeared, along with a representative.

Issue to be Decided

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

Summary of the Evidence

- [5] On January 17, 2022 the parties entered into a written fixed term tenancy agreement for the Residential Property. The fixed term was from February 1, 2022 to January 31, 2023. On January 12, 2023 the parties renewed the tenancy agreement for another fixed term which went from February 1, 2023 to July 31, 2023. Rent was \$2,300.00 due on the first day of the month. A security deposit of \$2,300.00 was required and paid.

Tenant's Evidence and Submissions

- [6] The Tenant submitted 27-pages into evidence, including a copy of the tenancy agreements, a list of items, text message communication between the parties, written submissions and photographs.
- [7] On July 31, 2023 the Tenant vacated the Residential Property and returned the keys. During the end of tenancy inspection, no issues were brought to the Tenant's attention.
- [8] The Tenant texted the Landlord on August 5, 2023 and requested the security deposit be returned.
- [9] The Landlord kept the majority of the security deposit. The Landlord sent photographs to the Tenant of alleged damage to the Residential Property.
- [10] On September 5, 2023 the Landlord returned \$360.00 to the Tenant by e-transfer. The Tenant did not receive any notice and/or application from the Landlord.

Landlord's Evidence and Submissions

- [11] The Landlord submitted 13-pages into evidence, including photographs and an e-transfer confirmation.
- [12] The Landlord sent a response message to the Tenant on August 5, 2023 disclosing the damage to the Residential Property and cleaning required.
- [13] The Landlord admitted to not filing an application with the Rental Office. The Landlord was unaware an application was required. The Landlord returned \$360.00 of the security deposit to the Tenant and retained the remaining \$1,940.00 for damage and cleaning.

Analysis

[14] The Application is made in accordance to section 75 of the *Act*, and is seeking a return of the security deposit pursuant to subsections 40.(1), (2), (3) and (4) of the *Act*. The relevant law is as follows:

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.*

[15] Further, the Island Regulatory and Appeals Commission (the “Commission”) in **Order LR23-69**, paragraph [15] made comments as it relates to section 40 of the *Act*.

[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...”*

[16] After a review of the evidence and testimony of the parties, the Officer concludes that the Tenant is entitled to a return of the remaining balance of the security deposit and interest. The evidence establishes that the tenancy ended July 31, 2023. This means the Landlord had until August 15, 2023 to either return the full amount of the security deposit and interest or file an application with the Rental Office to keep the security deposit and interest. The Officer finds that the evidence establishes that the Landlord did neither option required by subsection 40.(1) of the *Act*.

[17] Further, the evidence provided does not reveal a set of facts that the Landlord would be exempted under subsections (2) or (3) of the *Act*. The Landlord’s argument of ignorance does not shield the Landlord from, as the Commission described as, *the rigours of section 40*.

[18] Therefore, the Officer concludes that the Landlord did not comply with subsection 40.(1) of the *Act* and is not exempted under subsections (2) or (3). Such non-compliance of section 40.(1) triggers subsection (4) of the *Act*. As a result, the Landlord cannot make a claim against the security deposit and the Tenant is entitled to a return of their security deposit, including double the remaining balance of the security deposit and interest accrued on the principle amount. The Application is allowed.

Conclusion

[19] The Application is allowed. The Tenant's compensation is calculated as follows:

Item	Amount
Security Deposit Balance	\$2,300.00
Amount returned to the Tenant	(\$360.00)
Security Deposit amount retained	\$1,940.00
Interest (01/17/22 – 11/27/23)	\$52.14
Security Deposit (Double Awarded)	\$1,940.00
Total Compensation Awarded	\$3,932.14

[20] Pursuant to subsection 14.(9) of the *Act*:

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 interest accrued is adjusted to the date this Order is issued.

[22] The Landlord shall pay the Tenant \$3,931.14 on or before December 30, 2023.

[23] **Order LD23-553 will be served to the parties by e-mail on November 27, 2023.**

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$3,932.14 on or before December 30, 2023.

DATED at Charlottetown, Prince Edward Island, this 27th day of November, 2023.

(sgd.) Cody Burke

Cody Burke
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.