

Introduction

- [1] On October 23, 2023, the Tenants filed a Tenant Application to Determine Dispute (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a return of the Tenants’ security deposit.
- [2] On October 23, 2023, the Tenants served the Landlord with the Application by email in accordance with subsection 100.(1) of the *Act*.
- [3] On November 28, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). One of the Tenants (“M.S.”) and the Landlord participated in the hearing.

Issue to be Decided

- i. Are the Tenants entitled to the return of the security deposit?

Summary of the Evidence

- [4] On February 28, 2022, the Tenants and the Landlord entered into a verbal month-to-month tenancy agreement for the Residential Property. Rent was \$1,500.00 per month. Rent was originally due on the first day of each month, but was later paid biweekly. A security deposit of \$800.00 was required and paid.

Tenants’ Evidence and Submissions

- [5] The Tenants submitted 9 pages of documentary evidence, consisting of copies of text message exchanges between M.S. and the Landlord.
- [6] M.S. testified that the Tenants had a vacate date of September 30, 2023. M.S. testified that the Tenants had not removed all of their personal items from the Residential Property by the vacate date. M.S. testified that the Tenants were also unable to dispose of garbage due to the Island Waste Management Corporation facility being closed on September 30, 2023, in observance of Truth and Reconciliation Day. M.S. testified that she thought that the new tenants would not be moving into the Residential Property until October 6, 2023, and that there would be no problem collecting other personal items and disposing of remaining garbage later on.
- [7] M.S. testified that the Landlord only allowed the Tenants one hour on October 1, 2023, to retrieve the remainder of their personal items. M.S. testified that many personal items had to be left behind. M.S. testified that due to this limited amount of time, the Tenants were unable to all of the items and garbage at the Residential Property.
- [8] M.S. argued that it was unreasonable for the Landlord not to allow the Tenants to remove items and dispose of garbage for more than one hour on October 1, 2023. M.S. further argued that much of the damage alleged by the Landlord constituted normal wear and tear.

Landlord’s Evidence and Submissions

- [9] The Landlord submitted 46 pages of documentary evidence, consisting of written arguments, photographs of the interior and exterior of the Residential Property, and copies of screenshots of unsent e-transfer payments.

- [10] The Landlord testified that the Tenants had a vacate date of September 30, 2023, and that the new tenants were moving in the next day. The Landlord testified that she asked the new tenants if they would allow the Tenants to come into the Residential Property to retrieve their items and dispose of the remaining garbage. The Landlord testified that the new tenants were uncomfortable with this suggestion, therefore the Landlord only allowed the Tenants one hour on October 1, 2023, to retrieve items from the Residential Property.
- [11] The Landlord testified that the Residential Property was left in a very unclean and partially damaged condition by the Tenants. The Landlord testified that she took photographs on October 1, 2023, prior to touching anything. The photographs depict a significant accumulation of garbage within the interior and exterior of the Residential Property, as well as damage to walls in various locations.
- [12] The Landlord testified that she returned \$228.43 of the security deposit to the Tenants on October 10, 2023. The Landlord testified that she retained \$571.57 from the security deposit in compensation for damage and costs incurred by the Tenants. The Landlord submitted a screenshot of an unsent e-transfer payment to a garbage disposal company, dated October 9, 2023, in the amount of \$371.57. The Landlord claimed a further \$200.00 in compensation to fix holes in the wall of the Residential Property, although no receipts were provided for this expense. The Landlord testified that she did not file an application with the Rental Office to claim against the Tenants' security deposit.

Analysis

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

- [14] Further, the Officer refers to Order LR23-69, paragraph 15. where the Island Regulatory and Appeals 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...*

[15] The Officer notes that in this matter where there is a dispute over a security deposit, it is the Landlord's burden or onus to prove, on a balance of probabilities, to establish claims against the portion of the security deposit retained by the Landlord in the amount of \$571.57, plus \$18.25 in accrued interest as of the date of this order, November 29, 2023.

[16] The Officer finds that the Tenants are entitled to a return of the portion of the security deposit retained by the Landlord in the amount of \$571.57, plus interest on the principal amount. The Officer finds that the tenancy ended on September 30, 2023. That means the Landlord had until October 15, 2023, to either return the entirety of the security deposit and interest to the Tenants or file an application with the Rental Office to retain all or part of the security deposit. The Officer finds that the evidence establishes that the Landlord did neither.

[17] 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 Tenants are entitled to a return of the portion of the security deposit retained by the Landlord, including double the retained portion of the security deposit, and interest accrued on the principal amount.

Conclusion

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

Item	Amount
Retained Portion of Security Deposit	\$571.57
Interest (02/28/22 – 11/30/23)	\$18.30
Retained Portion of Security Deposit (Double Awarded)	\$571.57
Total Compensation Awarded	\$1,161.44

[19] 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.

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

[21] The Landlord shall pay the Tenants **\$1,161.44** on or before December 21, 2023.

[22] **Order LD23-562 was served on the parties by email on November 30, 2023.**

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenants **\$1,161.44** on or before December 21, 2023.

DATED at Charlottetown, Prince Edward Island, this 30th 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.