

Introduction

- [1] On September 26, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) dated September 19, 2023 (the "Application") with the Residential Tenancy Office (the "Rental Office") requesting a return of rent and a return of the security deposit.
- [2] The Tenant is seeking a return of rent in the amount of **\$200.00** and a return of the security deposit in the amount of **\$800.00** plus interest.
- [3] All relevant documents (including the Notice of Hearing and Combine Evidence Package) were properly served to the parties in accordance with subsection 100.(1) of the *Act*.
- [4] On November 21, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing themselves. The Landlord appeared, representing themselves.

Issues to be Decided

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

Summary of the Evidence

- [5] On September 4, 2023 the parties entered into a verbal tenancy agreement for a room in the Residential Property. Rent was \$800.00 due on the first day of the month. A security deposit of \$800.00 was required and paid on or around August 28, 2023 in cash.

Tenant's Evidence and Submissions

- [6] The Tenant submitted 36-pages of documents into evidence, including text message conversations between the parties, photographs, and a copy of another occupant's tenancy agreement. The Tenant was permitted to provide additional evidence which included additional text message conversations between the parties.
- [7] The Tenant stayed at the Landlord's Airbnb from July 20 to July 25, 2023. The Tenant was moving to the province for work beginning in September 2023. The Landlord offered the Tenant a room under a tenancy agreement.
- [8] The Tenant returned to the province on August 22, 2023, however, the room was not ready. The Landlord provided alternate and temporary accommodations for the Tenant from August 22, 2023 to September 4, 2023. The Tenant described the accommodations as a "garage". The Tenant testified that he paid \$250.00 cash.
- [9] The Tenant testified that he paid \$1,000.00 in cash to the Landlord on August 28, 2023. The Tenant was going to give the Landlord another \$200.00 towards rent and work the remaining \$400.00 balance off. The Tenant admitted to not paying that additional \$200.00. The Tenant started moving some of his personal belongings into the Residential Property on September 4, 2023. The Tenant testified that due to issues with transportation and the bus route, he was not able to move into the Residential Property.
- [10] The Tenant testified that he requested his \$1,000.00 be returned, which was the security deposit in the amount of \$800.00 and the return of the \$200.00 for September rent. The Landlord declined and responded with the Tenant broke the verbal agreement. The Tenant did not receive any application from the Landlord.

Landlord's Evidence and Submissions

- [11] The Landlord submitted 12-pages of documents into evidence, including written submissions, a screenshot of an Airbnb review and a copy of a tenancy agreement unsigned. The Landlord had the opportunity to provide additional evidence after the hearing, however, the Landlord did not provide any additional evidence to the Rental Office.
- [12] The Landlord did not dispute the facts presented by the Tenant regarding staying at an Airbnb and providing a 5-star review. The Landlord testified that he was trying help the Tenant and provided him with a room. The Landlord did not dispute the fact that the Tenant decided to not move into the Residential Property due to the bus routes; however, testified that it was not his responsibility to know the bus routes.
- [13] The Landlord disputed the Tenant paying him \$250.00. The Landlord testified that he only received \$1,000.00 from the Tenant - \$800.00 for the security deposit and \$200.00 which covered part of the \$250.00 owed on August 30, 2023. The Landlord testified that the Tenant broke the tenancy agreement. The Landlord testified that he kept the security deposit to cover the rent owed for September 2023.

Analysis

- [14] The Application is made in accordance to section 75 of the *Act*, and is seeking a return of rent and the return of the security deposit.

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

- [15] The Application is seeking a return of rent in the amount of \$200.00. In such applications, it is the person(s) alleging the entitlement for a return of rent to prove, on a balance of probabilities, any and all claims made against the other party. This means the alleging party must provide sufficiently clear, convincing and cogent evidence to prove their claim(s).
- [16] After reviewing the documents provided into evidence and hearing the testimony of the parties the Officer concludes there is insufficient evidence to conclude the Tenant is entitled to a return of rent. The parties provided conflicting testimony regarding whether or not the \$250.00 was paid during the Tenant's temporary stay on August 22, 2023.
- [17] The text messages presented into evidence by the Tenant does not provide sufficiently clear and convincing evidence for the Officer to conclude that payment was made for the temporary stay on August 22, 2023. However, the Officer does find that the testimony of the parties does establish that the Tenant paid the Landlord \$1,000.00. The security deposit in the amount of \$800.00, and \$200.00 for "rent". Although, the Officer notes that it remains unclear on the evidence whether or not the \$200.00 was intended to be used for September rent or applied to the \$250.00 owed for the Tenant's temporary stay on August 22, 2023.
- [18] With regard to the \$200.00 paid to the Landlord for "rent". The Officer concludes that the Tenant is not entitled to a return of that \$200.00. The Tenant did not provide proper notice to the Landlord pursuant to section 55 of the *Act*. The Tenant was required to provide at least 1-month's notice. Therefore, the claim for a return of rent in the Application is denied.

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

- [19] The Application is seeking a return of the security deposit pursuant to clauses 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.*

- [20] 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...”*

- [21] After a review of the evidence and testimony of the parties, the Officer concludes that the Tenant is entitled to a return of the security deposit and interest. The evidence establishes that on or around August 28, 2023 the parties entered into a verbal agreement to rent a room in the Residential Property. The parties agreed that on September 4, 2023 the Tenant could move into the Residential Property. No written agreement was signed at the time, but the Tenant paid \$1,000.00 to the Landlord for the security deposit a portion of “rent”. Although, the Officer notes that it remains unclear on the evidence whether or not the \$200.00 was intended to be used for September rent or applied to the \$250.00 owed for the Tenant’s temporary stay on August 22, 2023.

- [22] However, on September 5, 2023 the Tenant informed the Landlord through text message that he would not be moving into the Residential Property due to the bus route issues. The parties conversed through text message and the Landlord suggested that he understood the Tenant’s situation and that he would only hold the Tenant to a 1-month commitment (Page 12. of the Evidence Package).

- [23] The Officer notes that the evidence does not provide sufficient clarity around when the tenancy ended, and the parties provided conflicting testimony around the end of the tenancy. The parties effectively had a verbal month-to-month which they agreed to between August 22, 2023 and August 30, 2023. It is clear on the evidence that the Tenant was to move in on September 4, 2023, however, rent would normally be due on the first day of each month.
- [24] The Officer concludes that the tenancy would have ended September 30, 2023 if the Tenant provided notice to the Landlord by August 31, 2023. However, the Officer notes that the parties' verbal agreement was that the Tenant would begin occupancy on September 4, 2023. The text message response from the Landlord on page 12 of the Evidence Package also suggests that the Landlord was in agreement that the tenancy was to end at the end of September 2023 (as the Landlord said *1-month commitment*). Therefore, the Officer concludes that the tenancy ended on September 30, 2023. This means the Landlord had until October 15, 2023 to either return the security deposit and interest or file an application (Form 2(B)) with the Rental Office to make a claim against the security deposit and interest. The evidence establishes that the Landlord did neither option required by subsection 40.(1) of the *Act*.
- [25] The Officer further notes that the Application was filed before the October 15, 2023 deadline. However, the Landlord received the Application and the Notice of Hearing by the Rental Office all before the deadline. Despite being provided the documents; the Landlord still did not file an application with the Rental Office.
- [26] Further, the evidence does not reveal a set of facts that the Landlord would be exempted under subsections (2) or (3) of the *Act*. The Landlord was required to file an application with the Rental Office and such ignorance of the law does not shield the Landlord from, as the Commission described as, *the rigours of section 40*.
- [27] 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 on the principal amount. The Application is allowed, in part.

Conclusion

- [28] The Application is allowed, in part. The Tenant's compensation is calculated as follows:

Item	Amount
Security Deposit Balance	\$800.00
Interest (08/28/22 – 12/01/23)	\$5.21
Security Deposit (Double Awarded)	\$800.00
Total Compensation Awarded	\$1,605.21

- [29] 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.

- [30] The interest accrued is adjusted to the date this Order is issued.

[31] The Landlord shall pay the Tenant \$1,605.21.

[32] **Order LD23-563 will be served to the parties by e-mail on December 1, 2023.**

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$1,605.21 on or before December 31, 2023.

DATED at Charlottetown, Prince Edward Island, this 1st day of December, 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.