

Introduction

- [1] On November 16, 2023, the Tenant 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 Tenant's security deposit.
- [2] On December 7, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Landlord participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [3] On January 18, 2021, the Tenant and the Landlord entered into a written month-to-month tenancy agreement for the Residential Property beginning on February 1, 2021. On January 18, 2023, the Tenant and Landlord entered into another written month-to-month tenancy agreement for the Residential Property, beginning on February 1, 2023. Rent was \$1,275.00 per month, due on the first day of each month. A security deposit of \$500.00 was required and paid.

Tenant's Evidence and Submissions

- [4] The Tenant submitted 12 pages of documentary evidence, including a copy of the tenancy agreement, a copy of the exit inspection report, and a video of the alleged flooring damage.
- [5] The Tenant argued that the flooring damage alleged by the Landlord constituted reasonable wear and tear. She testified that as she lived in the Residential Property since February 1, 2021, a considerable amount of wear and tear is to be expected. She stated that the damage to the flooring did not require full replacement of the flooring within the bedroom.
- [6] The Tenant made further arguments that marks to the walls were caused by moving furniture and the damage consists of reasonable wear and tear.

Landlord's Evidence and Submissions

- [7] The Landlord submitted 14 pages of documentary evidence, including a copy of the tenancy agreement, a copy of the exit inspection, a copy of an invoice and a receipt, and photographs and videos of the condition of the rental unit.
- [8] The Landlord testified that the tenancy ended on November 1, 2023, and that an exit inspection was performed that day. The Landlord testified that the Tenant caused damage to the rental unit, which incurred costs totaling more than the amount of the security deposit and accrued interest. The Landlord testified that there was considerable damage to the walls of the rental unit, consisting of various scrapes and marks. He also testified that the damage to the area of flooring was severe, and required replacement of laminate for the entire bedroom in order for the flooring to match. The Landlord submitted a video depicting the condition of the walls and flooring of the rental unit. The Landlord submitted a copy of the exit inspection report, although it was not signed by the Tenant.
- [9] The Landlord testified that it cost \$800.00 to repair and paint the walls and \$600.00 to replace and install laminate flooring in the bedroom. The Landlord submitted an invoice from a construction company for these repairs in the amount of \$1,400.00. The Landlord additionally submitted a receipt from Kent Building Supplies showing flooring material costs of \$517.63.

Analysis

[10] 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.*

[11] 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...*

[12] The Officer finds that the tenancy ended on November 1, 2023. That means the Landlord had until November 16, 2023, to either return the entirety of the security deposit and interest to the Tenant or file an application with the Rental Office to retain all or part of the security deposit, pursuant to subsection 40.(1) of the Act. The evidence establishes that the Landlord did neither. Therefore, the Officer finds that the Tenant is entitled to the return of the security deposit retained by the Landlord in the amount of \$500.00, plus interest on the principal amount.

[13] Further, the Officer finds that the facts of this case do not present an exception 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. In such cases, non-compliance of the legislation triggers subsection 40.(4) of the Act. The Officer finds that the Tenant is entitled to a return of the security deposit, including double the amount of the security deposit, and interest accrued on the principal amount.

Conclusion

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

Item	Amount
Security Deposit	\$500.00
Interest (02/01/21 – 12/12/23)	\$12.99
Security Deposit (Double Awarded)	\$500.00
Total Compensation Awarded	\$1,012.99

[15] 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.

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

[17] The Landlord shall pay the Tenant **\$1,012.99** on or before January 12, 2023.

[18] **Order LD23-582 will be served on the parties by email on December 12, 2023.**

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant **\$1,012.99** on or before January 12, 2023.

DATED at Charlottetown, Prince Edward Island, this 12th day of December, 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.