

Introduction

- [1] On November 8, 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 August 4, 2023, the Tenant and the Landlord entered into a written month-to-month tenancy agreement for the Residential Property. Rent was \$600.00 per month, due on the first day of each month. A security deposit of \$600.00 was required and paid on August 21, 2023.

Tenant's Evidence and Submissions

- [4] The Tenant submitted into evidence three audio recordings of a conversation regarding the tenancy between the Tenant, other tenants, and the Landlord.
- [5] The Tenant testified that she is an international student and moved into the Residential Property on September 4, 2023. The Tenant testified that she entered the tenancy agreement for the Residential Property under the belief that it would be a convenient location for her to commute to school. She testified that it became immediately apparent that due to the location and insufficient public transportation nearby, the tenancy would not work.
- [6] The Tenant testified that later on September 4, 2023, she advised the Landlord verbally that she could not stay there and requested the return of her security deposit. She stated that she vacated the Residential Property on September 6, 2023. She has made several requests for the return of the security deposit but has not received it.

Landlord's Evidence and Submissions

- [7] The Landlord submitted 9 pages of documentary evidence, including a copy of the tenancy agreement, written arguments, and copies of message exchanges between the Landlord and the Tenant.
- [8] The Landlord testified that the Tenant deciding to end the tenancy immediately after arriving resulted in him suffering significant financial loss. The Landlord testified that he had cancelled short-term rental bookings for the Residential Property in order to rent it long-term when he became aware of a severe shortage in student housing. The Landlord testified that he had several students staying in the Residential Property in early September 2023. The Landlord testified that after the Tenant and some others vacated on or around September 6, 2023, he has since been unable to rent out the Residential Property at full capacity, despite efforts to do so.
- [9] The Landlord testified that he did not receive rent from the Tenant for the month of September 2023 and that he kept the Tenant's security deposit. The Landlord testified that he was under the belief that he did not have an obligation to return the security deposit to the Tenant because it was paid to "secure the Tenant's place" in the Residential Property for the beginning of the tenancy.
- [10] The Landlord acknowledged that he did not file an application with the Rental Office to claim against the Tenant's security deposit.

Analysis

[11] 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.*

[12] 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...*

[13] The Officer finds that the Tenant gave notice to the Landlord on September 4, 2023, that she wished to end the tenancy. The Officer notes the application of subsection 55.(2) of the Act, which states:

55. Notice for monthly or other periodic tenancy

- (2) *A tenant may end a month-to-month or other periodic tenancy by giving the landlord a notice of termination effective on a date that*
- (a) *is not earlier than one month after the date the landlord receives the notice; and*
 - (b) *is the day before the day that rent is payable under the tenancy agreement.*

[14] The Officer notes that on September 4, 2023, the Tenant gave verbal notice to the Landlord to end the month-to-month tenancy agreement. This resulted in the tenancy agreement properly ending on October 31, 2023, pursuant to subsection 55.(2) of the Act.

- [15] As the tenancy ended on October 31, 2023, this meant that the Landlord had until November 15, 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. 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 \$600.00, plus interest on the principal amount.
- [16] 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

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

Item	Amount
Security Deposit	\$600.00
Interest (08/21/23 – 12/12/23)	\$4.64
Security Deposit (Double Awarded)	\$600.00
Total Compensation Awarded	\$1,204.64

- [18] 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.

- [19] The Officer adjusts the interest accrued to the date this Order is issued.
- [20] The Landlord shall pay the Tenant **\$1,204.64** on or before January 12, 2024.
- [21] **Order LD23-583 will be served on the parties by email on December 12, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant **\$1,204.64** on or before January 12, 2024.

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.