

Introduction

- [1] On November 20, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking the following remedies:

To request the return of the security deposit;
To request a determination that my landlord entered the rental unit unlawfully;
I am a former Tenant and request compensation from my former Landlord for a bad faith eviction; and
Other: "Damage Deposit 200.00 + interest 21 July, 2006 – plus kitbag of clothing"

- [2] At the hearing the Tenant testified that he was not evicted, but left the Rental Unit voluntarily. He stated that he accidentally selected the remedy to seek compensation for a bad faith eviction and was withdrawing that claim.
- [3] The "Other" remedy claim was understood to refer to the Tenant's claim for the return of his security deposit, as well as his claim that the Landlord improperly disposed of his kitbag containing his clothing.
- [4] All documents (including the *Tenant Notice of Annual Allowable Rent Increase* (Form 8), the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with subsection 100.(1) of the Act.
- [5] On December 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a representative for the Landlord (the "Representative"), and two witnesses ("P.T." and "R.R.") for the Landlord participated in the hearing.

Issues to be Decided

- i. Is the Tenant entitled to the return of the security deposit?
- ii. Did the Landlord unlawfully enter the Rental Unit?
- iii. Did the Landlord improperly dispose of the Tenant's personal property?

Summary of the Evidence

- [6] On July 21, 2006, the Tenant and the Landlord entered into a written month-to-month tenancy agreement for the Rental Unit. The Residential Property is a multi-unit apartment building, of which the Rental Unit is a single unit. Rent was \$479.00 per month, due on the first day of each month. A security deposit of \$200.00 was required and paid on July 21, 2006.

Tenant's Evidence and Submissions

- [7] The Tenant submitted three pages of documentary evidence, consisting of written arguments and a copy of a receipt for the security deposit in the amount of \$200.00, dated July 21, 2006.
- [8] The Tenant testified that on October 1, 2023, he advised the Landlord that he would be vacating the Rental Unit on October 31, 2023. The Tenant testified that he was away from the Rental Unit for several days, beginning on October 25, 2023. The Tenant testified that he attempted to return to the Rental Unit on October 30, 2023, but he was advised that the Landlord had already taken possession of the Rental Unit and had painters working inside of it. The Tenant testified that he believed that he therefore no longer had any right to enter the Rental Unit.

- [9] The Tenant testified that he would have occupied the Rental Unit on October 30 and 31, 2023, if it had not been for the Landlord prematurely taking possession of it before the end of the tenancy on October 31, 2023.
- [10] The Tenant further stated that as of the hearing, the Landlord still has not returned his security deposit to him.
- [11] The Tenant testified that he was certain that he had left his kitbag containing various clothing items inside a closet in the Rental Unit. The Tenant testified that the Landlord had not returned his kitbag and clothing to him.
- [12] The Tenant also testified that he left his box spring, mattress, and two chairs in the Rental Unit, although he had planned to throw those in the garbage anyway.

Landlord's Evidence and Submissions

- [13] The Representative testified that he submitted one page of written arguments as documentary evidence. However, this did not appear to have been received by the Rental Office and was not in the evidence package. The Representative was permitted to read the written arguments at the hearing.
- [14] The Representative testified that he received notice from the Tenant that he would vacate the Rental Unit on October 31, 2023, which he accepted. He stated that on or about October 29, 2023, he visited the Rental Unit, looked inside, knocked, and entered the Rental Unit using his key. He stated that he only looked around inside the entrance and then left. He stated that he entered because he believed the Tenant had already vacated the Rental Unit. The Representative acknowledged that the Tenant never indicated that he planned to vacate the Rental Unit prior to October 31, 2023.
- [15] The Representative testified that he attended the Rental Unit with P.T. and R.R. on October 30, 2023, to paint and do maintenance. He advised that the Rental Unit was in an extremely unclean condition with significant damage caused by the Tenant having smoked cigarettes within the Rental Unit. The Representative testified that he kept the security deposit to help cover costs incurred to clean and repair the Rental Unit. He acknowledged that he did not file an application with the Rental Office to claim against the security deposit.
- [16] P.T. and R.R. testified they found the box spring, mattress, and two chairs left in the Rental Unit, but there was no kitbag ever found.
- [17] The Representative testified that he had the box spring, mattress, and two chairs disposed of approximately ten days later. He acknowledged that the Tenant had not given him permission to dispose of those items.

Analysis

Issue i: Is the Tenant entitled to the return of the security deposit?

- [18] 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.*

[19] 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...*

[20] The Officer finds that the Tenant gave notice to the Landlord on October 1, 2023, to end the tenancy effective October 31, 2023, which the Landlord accepted. The Officer notes that the Representative acknowledged having entered the Rental Unit on or around October 29, 2023, and that he took possession of the Rental Unit to have painters begin work on the Rental Unit on October 30, 2023.

[21] The Officer finds that the tenancy agreement ended on October 30, 2023. This meant that the Landlord had until November 14, 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 \$200.00, plus interest on the principal amount.

[22] 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.

Issue ii: Did the Landlord unlawfully enter the Rental Unit?

[23] Subsections 22.(c), 23.(a) and (b), and 42.(1), (2), and (3) of the Act state:

22. *Tenant's right to quiet enjoyment*

A tenant is entitled to quiet enjoyment of the rental unit including, but not limited to, the right to

- (c) *exclusive possession of the rental unit, subject only to the landlord's right to enter the rental unit in accordance with section 23.*

23. Landlord's right to enter rental unit restricted

A landlord shall not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) *the tenant gives permission at the time of the entry or not more than 10 days before the entry;*
- (b) *the landlord provides written notice to the tenant at least 24 hours before the time of entry and the purpose of the entry is to*
 - (i) *carry out a repair or replacement or do work in the rental unit,*
 - (ii) *allow a potential mortgagee, insurer or appraiser of the residential property to view the rental unit, or*
 - (iii) *carry out an inspection of the rental unit, if*
 - (A) *the inspection is for the purpose of determining whether the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under this Act, and*
 - (B) *it is reasonable to carry out the inspection.*

42. Abandonment of rental unit by tenant

- (1) *Where a tenant has abandoned the rental unit, the landlord may enter and take possession of the rental unit.*
- (2) *A tenant is considered to have abandoned a rental unit only where*
 - (a) *the tenant has vacated the rental unit;*
 - (b) *the tenancy agreement is not terminated in accordance with this Act or the tenancy agreement; and*
 - (c) *rent is overdue.*
- (3) *Not less than 24 hours before entering a rental unit for the purpose of taking possession under subsection (1), the landlord shall post a notice in a conspicuous place on the residential property stating*
 - (a) *the landlord's belief that the tenant has abandoned the rental unit;*
 - (b) *the landlord's intention to enter the rental unit for the purpose of taking possession unless the tenant notifies the landlord, before the time set out in the notice, that the tenant has not abandoned the rental unit; and*
 - (c) *the day and hour when the landlord will enter the rental unit.*

[24] The Officer finds based on the evidence that the Landlord entered the Rental Unit without the Tenant's permission and contrary to section 23. of the Act. The Officer notes the Tenant's testimony that he told the Landlord he would vacate on October 31, 2023, and that he never indicated he would vacate prior to that date. The Officer further notes the Representative's admission that he entered the Rental Unit on or around October 29, 2023, without permission and without any prior written notice of his intention to enter.

[25] The Officer notes that the Rental Unit was not "abandoned" pursuant to section 42. of the Act, as the tenancy agreement had not ended and rent was not overdue.

[26] The Officer finds that the Tenant concluded that the Landlord had taken possession of the Rental Unit on October 30, 2023, and that he was no longer able to enter it.

[27] The Officer notes subsections 85.(1)(b) and (d) of the Act, which state:

85. Powers of the Director

- (1) *After hearing an application, the Director may make an order*
- (b) *directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
 - (d) *requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.*

[28] The Officer notes the Tenant's testimony that he would have returned to the Rental Unit on October 30 and 31, 2023, if the Landlord had not already taken possession of it. The Officer finds that the Tenant is entitled to a return of rent for the two days he would have occupied the Rental Unit if the Landlord had not unlawfully taken possession of it.

[29] As there are 31 days in October, the pro-rated daily rent is \$15.45, resulting in an award of \$30.90 for the two days of October 30 and 31, 2023. The Landlord shall return rent to the Tenant in the amount of \$30.90.

Issue iii: Did the Landlord improperly dispose of the Tenant's personal property?

[30] Subsections 43.(2) and (4) of the Act state:

43. Abandoned personal property

- (2) *Where a tenant abandons or vacates a rental unit and leaves personal property on the residential property, the landlord shall either*
- (a) *remove the personal property and immediately place it in safe storage; or*
 - (b) *store the personal property on the residential property in a safe manner.*

Minimum storage period

- (4) *The personal property required to be stored under subsection (2) shall be stored for not less than one month or a lesser period ordered by the Director, unless the tenant takes possession of the personal property before the applicable period has elapsed.*

[31] The Officer notes that it is the Tenant's burden to prove, on a balance of probabilities, that the Representative improperly disposed of his personal property contrary to section 43. of the Act. The Tenant must provide the decision-maker with sufficiently clear, convincing and cogent evidence to prove his claim.

[32] The Officer notes that the Representative and the Landlord's two witnesses testified that they never saw a kitbag left in the Rental Unit. The witnesses testified that they found the Tenants' mattress, box spring, and two chairs, but did not find a kitbag or clothing left behind. The Officer finds that the Tenant was unable to produce any compelling evidence to establish that the Landlord took possession of his kitbag and clothing.

[33] The Officer finds that the Tenant has failed to establish on the evidence that the Landlord improperly disposed of his kitbag and clothing.

[34] However, the Officer notes the Representative's admission that he disposed of the Tenant's box spring, mattress, and two chairs approximately ten days after October 30, 2023. The Representative further acknowledged that the Tenant had not given him permission to dispose of those items and had not indicated he was abandoning them.

[35] The Officer finds that the Landlord disposed of the Tenant's chairs, box spring, and mattress, contrary to section 43. of the Act. However, the Tenant testified that he had intended to throw out those items himself regardless and therefore the Officer makes no award for compensation to the Tenant.

Conclusion

[36] The Application is allowed in part. The Officer's calculations are as follows:

Item	Amount
Security Deposit	\$200.00
Interest (07/21/06 – 12/27/23)	\$32.76
Security Deposit (Double Awarded)	\$200.00
Return of Rent (October 30-31, 2023)	\$30.90
Total Compensation Awarded	\$463.66

[37] 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.

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

[39] The Landlord shall pay the Tenant **\$463.66** on or before January 18, 2024.

[40] **Order LD23-616 will be served on the parties by ordinary mail on December 27, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$463.66 on or before January 18, 2024.
- B. A certified copy of Order LD23-616 may be filed in the Supreme Court and enforced by Sheriff Serviced as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 27th 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.