

Introduction

- [1] On November 21, 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 security deposit and a return of an overpayment of the security deposit.
- [2] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [3] On December 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). A Landlord and the Tenants participated in the hearing. The parties confirmed the overpayment of the security deposit had been returned to the Tenants. Therefore, the Officer does not need to make a determination regarding this matter.

Issue to be Decided

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

Summary of the Evidence

- [4] On September 2, 2022, the parties entered into a written fixed-term tenancy agreement for the Residential Property which then converted to a month-to-month agreement. Rent was \$1,200.00 due on the first day of the month. A security deposit of \$1,200.00 was required and paid. The Tenants vacated the Residential Property on October 31, 2023.

Tenants’ Evidence and Submissions

- [5] The Tenants submitted several pages of documents into evidence including text messages between the parties, photographs of the rental unit, and parts of the tenancy agreement.
- [6] The Tenants did not receive any paperwork from the Landlords stating the Landlords were keeping the security deposit. The Landlords stated they had put a security deposit notice on the door of the rental unit after the Tenants had already moved out, so they never received a copy. The Tenants asked for a walk-through before they moved out but the Landlords did not do one with them. The chairs the Landlords are claiming need to be cleaned were covered when the Tenants lived there and are in the same state as when they moved in, as shown in their submitted photographs.

Landlords’ Evidence and Submissions

- [7] The Landlords submitted a one-page written summary into evidence. The Tenants gave notice on October 3, 2023, that they were moving out and they provided the name of another tenant who could move in. That prospective tenant changed their mind so on November 9, 2023, the Landlord put a notice on the door of the rental unit that she was keeping the security deposit, as that was the last known address of the Tenants. The Landlord was not able to find a new tenant to move in until November 20, 2023. She did not think she had to give the Tenants notice about the security deposit until she had found a new tenant.
- [8] Once the new tenant had moved in, she notified the Tenants she would be keeping part of the security deposit. She stated she was keeping \$800.00 for part of the rent for November 2023 for improper notice. She was keeping \$131.92 for the electric bills from the time the Tenants had vacated until the new tenant moved in. There are also two chairs which need to be cleaned at an estimated cost of \$90.00 plus tax for each chair.

Analysis

Issue i: Are the Tenants entitled to the return of the security deposit?

[9] The Act states:

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.*

[10] Further, the Officer refers to Order LR23-69, where the Island Regulatory and Appeals Commission (the "Commission") makes these comments:

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...

[11] The Officer notes the Tenants gave the Landlords their notice on October 3, 2023, so the tenancy agreement would have ended on November 30, 2023, as subsection 55.(2) of the Act states:

(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.*

[12] However, as the rental unit was re-rented on November 20, 2023, the Officer finds that the tenancy agreement ended on November 20, 2023. That means the Landlords had until December 5, 2023 (15 days), to either return the security deposit and interest or file an application with the Rental Office to retain the security deposit. The Officer finds the evidence establishes that the Landlords did neither.

- [13] 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 Landlords did not comply with subsection 40.(1) of the *Act*, and are 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 their security deposit, including double the security deposit and interest accrued on the principle amount.

Conclusion

- [14] The Application is allowed and the Landlords shall pay the Tenants \$2,429.84. The Officer's calculations are as follows:

Item	Amount
Double Security Deposit	\$2,400.00
Interest on Principle Amount (Sept. 2/22 – Dec. 29/23)	\$29.84
Total Compensation Awarded	\$2,429.84

- [15] Pursuant to subsection 14.(9) of the *Act*, the interest accrued is adjusted to the date this Order is issued.

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.

IT IS THEREFORE ORDERED THAT

- A. The Landlords shall pay the Tenants \$2,429.84 on or before January 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 29th day of December, 2023.

(sgd.) Mitchell King

Mitchell King
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.