

Introduction

- [1] On November 27, 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.
- [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 January 3, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two Tenants participated in the hearing. The Landlord did not participate.

Issue to be Decided

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

Summary of the Evidence

- [4] On August 1, 2023, the parties entered into a written fixed-term tenancy agreement for the Residential Property. Rent was \$1,800.00 due on the first day of the month. A security deposit of \$1,800.00 was required and paid. The Tenants vacated the Residential Property on October 30, 2023.

Tenants' Evidence and Submissions

- [5] The Tenants submitted several pages of documents into evidence including messages between the parties and photographs of the rental unit.
- [6] The Tenants vacated two months into their one year fixed-term tenancy agreement. The Landlords told the Tenants the rental unit would be cleaned and painted but after two months nothing was done to the rental unit. The Tenants notified the Landlord they would be vacating on October 30, 2023, and requested the security deposit returned. The Tenants found new tenants for the rental unit and the new tenants moved in on November 1, 2023.
- [7] The Landlord stated they were going to be keeping \$300.00 of the security deposit because of improper garbage disposal. The Landlord then stated because the Tenants brought cockroaches into the rental unit the Landlord was going to keep the entire security deposit. The Tenants denied they brought cockroaches into the rental unit. The photographs submitted by the Tenants show the rental unit was clean when they left.

Landlord's Evidence and Submissions

- [8] The Landlord submitted a copy of the tenancy agreement into evidence. The Landlord did not participate in the hearing.

Analysis

[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 finds the evidence establishes the tenancy agreement ended on October 30, 2023. That means the Landlord had until November 14, 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 the Landlord did neither.

[12] Further, the Officer finds 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 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. Such non-compliance triggers subsection 40.(4) of the Act. The Officer finds that the Tenant is entitled to a return of their security deposit, including double the security deposit and interest accrued on the principle amount.

Conclusion

[13] The Application is allowed.

[14] The Landlord shall pay the Tenants \$3,619.86 on or before February 29, 2024. The Officer's calculations are as follows:

Item	Amount
Security Deposit	\$1,800.00
Interest (Aug. 1/23 – Jan. 9/24)	\$19.86
Security Deposit (Double Awarded)	\$1,800.00
Total Compensation Awarded	\$3,619.86

[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 Landlord shall pay the Tenants \$3,619.86 on or before February 29, 2024.

DATED at Charlottetown, Prince Edward Island, this 9th day of January, 2024.

(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.