

Introduction

- [1] On December 5, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office").
- [2] The Application was filed to request compensation as a result of an eviction and a return of the security deposit.
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with subsection 100(1) of the *Act*.
- [4] On January 8, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord, the Landlord's counsel, and Tenant participated.

Issues to be Decided

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

Summary of the Evidence

- [5] On October 14, 2021, the Tenant and the Landlord entered into a written fixed-term tenancy agreement for the Residential Property. Rent was \$1,800.00 due on the fifteenth day of the month. A security deposit of \$1,800.00 was paid. The Tenant vacated on November 15, 2023, as a result of an eviction notice for occupation by the Landlord.

Tenant's Evidence and Submissions

- [6] The Tenant submitted several pages of documentary evidence including messages between the parties, receipts, and photographs and videos of the rental unit.
- [7] On August 15, 2023, the Landlord served the Tenant with an eviction notice as the Landlord required possession of the rental unit. He is requesting compensation for being evicted in the amount of one month's rent and moving expenses pursuant to the *Act*. The Tenant submitted an invoice for moving expenses in the amount of \$793.50.
- [8] The Tenant is requesting a return of double the security deposit plus interest, as the Landlord did not return the security deposit to the Tenant within 15 days after the end of the tenancy. He stated he left the rental unit clean and there was no damage.

Landlord's Evidence and Submissions

- [9] The Landlord submitted several pages of documentary evidence including photographs of the rental unit, messages between the parties, and a written submission. She stated she was undergoing medical treatment at the time the Tenant vacated, so she missed the 15-day deadline for filing to retain the security deposit. She stated that consideration should be given because she was ill and did not think about the security deposit. She stated the Tenant left the rental unit in an unclean state when he vacated.
- [10] The Landlord stated the Tenant lost their right to compensation when they provided notice of early termination following receipt of the eviction notice. The vacate date on the eviction notice was December 15, 2023, and the Tenant vacated early on November 15, 2023. She stated the *Act* is silent on a tenant's right to compensation if they provide early notice of termination following receipt of an eviction notice for the personal use of the landlord. The *Act* only speaks to compensation for early notice for an eviction for repairs or renovations.

Analysis

Issue i: Is the Tenant entitled to compensation?

[11] The Act states:

Landlord's notice for landlord's use of property

62. A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by

(a) the landlord.

Tenant may end tenancy early following notice

69.(1) Where a landlord gives a tenant a notice of termination of a tenancy under section 62, 63, 64, 66 or 67, the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice of termination on a date that is earlier than the effective date of the landlord's notice; and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

Right to compensation

69.(3) A notice of termination under this section does not affect the tenant's right to compensation under section 70.

Compensation for personal use

72. A landlord shall compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to one month's rent plus reasonable moving expenses in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant.

[12] The Officer does not find that the Tenant has established he is entitled to compensation. The Officer notes that the Act is silent on a tenant's right to compensation if they provide early notice for being evicted pursuant to subsection 62.(a) of the Act. Subsection 69.(3) explicitly provides an exception under "this section" meaning section 69 (right to provide early notice) for a tenant to receive compensation under section 70 (repairs or renovations). However, the Act does not include a similar clause for compensation with regards to section 71 (demolition or conversion) or section 72 (personal use). Therefore, the Officer is unable to award the Tenant's request for compensation and this part of the Application is denied.

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

[13] 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.*

[14] 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...

[15] The Officer finds the evidence establishes the tenancy agreement ended on November 15, 2023. That means the Landlord had until November 30, 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.

[16] 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, in the amount of \$3,647.97.

Conclusion

[17] The Application is allowed in part.

[18] The Landlord shall pay the Tenant \$3,647.97 on or before February 29, 2024. The calculations are as follows:

Item	Amount
Security Deposit	\$1,800.00
Interest (Oct. 14/21 – Jan. 18/24)	\$47.97
Security Deposit (Double Awarded)	\$1,800.00
Total Compensation Awarded	\$3,647.97

[19] 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 Tenant **\$3,647.97** on or before February 29, 2024.

DATED at Charlottetown, Prince Edward Island, this 18th 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.