

Introduction

- [1] On December 19, 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 in the amount of \$2,100.00.
- [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 February 7, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two Tenants and the Landlord participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] On November 11, 2022, the parties entered into a written fixed-term tenancy agreement for the Residential Property. Rent was \$2,100.00 due on the first day of the month. A security deposit of \$2,100.00 was required and paid. The Tenants vacated the Residential Property on November 30, 2023.

Tenants' Evidence and Submissions

- [5] The Tenants submitted several pages of documents into evidence including part of the tenancy agreement, messages between the parties, and photographs of the rental unit.
- [6] The Tenants stated the Landlord did not file any paperwork to retain the security deposit and the Tenants are requesting a return of the security deposit. They were not provided an opportunity for a walk-through when they vacated. The Landlord's cleaning bill does not equal the security deposit and the Landlord did not paint until several months after the Tenants vacated. The Tenants submitted photos showing the rental unit was clean when the Tenants vacated.

Landlord's Evidence and Submissions

- [7] The Landlord submitted several pages of documents into evidence including a copy of the tenancy agreement, a written submission from a property manager, receipts, and photographs of the rental unit.
- [8] The Landlord stated he did not know he had to file any paperwork to retain the security deposit. He stated his property manager told him to retain the security deposit for damages to the dishwasher, fridge, and for repairing and painting the walls, all of which is more than wear and tear. It cost \$1,150.00 for cleaning, \$300.00 for painting, and he has another receipt for \$73.00 he can also submit.

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 November 30, 2023. That means the Landlord had until December 15, 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 Tenants are 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 \$4,258.57 on or before March 31, 2024. The Officer's calculations are as follows:

Item	Amount
Security Deposit	\$2,100.00
Interest (Nov. 11/22 – Feb. 16/24)	\$58.57
Security Deposit (Double Awarded)	\$2,100.00
Total Compensation Awarded	\$4,258.57

[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 \$4,258.57 on or before March 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 16th day of February, 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.