

Introduction

- [1] On December 12, 2023, the Tenant 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 \$750.00 pursuant to the *Residential Tenancy Act* (the “Act”).
- [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 9, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant participated in the hearing however the Landlord did not participate.

Issue to be Decided

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

Summary of the Evidence

- [4] On November 13, 2023, the parties entered into a written month-to-month tenancy agreement for the Residential Property. Rent was \$700.00 due on the first day of the month. A security deposit of \$750.00 was required and paid. The Tenant vacated the Residential Property on November 14, 2023.

Tenant’s Evidence and Submissions

- [5] The Tenant submitted several pages of documents into evidence including a copy of the tenancy agreement, a written submission, banking documents, and messages between the parties.
- [6] The Tenant stated he moved into the rental unit on November 13, 2023. He had paid a \$750.00 security deposit but only had to pay \$350.00 for rent because he moved in part way during the month. During the night the thermostat turned off by itself and the Tenant did not feel comfortable staying the house by himself, as the other renters had not yet moved in. The Tenant vacated on November 14, 2023, and notified the Landlord on November 15, 2023. The Landlord stopped responding to the Tenant’s text messages after that date. The security deposit was not returned.

Landlord’s Evidence and Submissions

- [7] The Landlord did not submit any evidence or participate in the hearing.

Analysis

- [8] 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.

- [9] 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...

- [10] The Officer finds the evidence establishes the tenancy agreement ended on November 30, 2023, as rent was paid until the end of November 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.

- [11] 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

- [12] The Application is allowed.
- [13] The Landlord shall pay the Tenant \$1,505.00 on or before March 31, 2024. The Officer’s calculations are as follows:

Item	Amount
Security Deposit	\$750.00
Interest (Nov. 13/23 – Feb. 23/24)	\$5.00
Security Deposit (Double Awarded)	\$750.00
Total Compensation Awarded	\$1,505.00

- [14] 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 \$1,505.00 on or before March 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 23rd 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.