

Introduction

- [1] On December 18, 2023 the Tenants filed a *Tenant Application to Determine Dispute* (Form 2(A)) dated October 11, 2023 (the “Application”) with the Residential Tenancy Office (the “Rental Office”), requesting a return of the security deposit, pursuant to clause 59 of the *Residential Tenancy Act* (the “Act”).
- [2] The Tenants are seeking the return of their security deposit in the amount of **\$1,300.00** plus interest.
- [3] All documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with clause 100(1) of the Act.
- [4] On February 13, 2024 a teleconference hearing was held at 11:00 a.m. before a Residential Tenancy Officer (the “Officer”). The Tenant appeared, representing themselves. The Landlord appeared, representing themselves.

Issue to be Decided

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

Summary of the Evidence

- [5] On September 2, 2023 the parties entered into a verbal month-to-month tenancy agreement for a room with a kitchen and bathroom. Rent was \$1,300.00 due on the first day of the month. A security deposit of \$1,300.00 was required and paid on August 15, 2023.

Tenants’ Evidence and Submissions

- [6] The Tenants submitted (4) four pages of documents into evidence including screen shots of text messages and e-mail message conversations with the Landlord, and an e-transfer payment.
- [7] The Tenant testified that they moved into the Rental Unit on September 2, 2023 and did not like the Rental Unit. On September 3, 2023 the Tenant informed the Landlord that they would be vacating on October 1, 2023.
- [8] The Tenant testified that on October 1, 2023 they vacated. The Tenant testified that he requested the security deposit be returned. The Tenant testified that he asked on different occasions about the security deposit being returned but the Landlord never responded. The Tenant testified that he never received any application and/or notice from the Landlord. The Tenant testified that the Landlord should have their contact information.

Landlord’s Evidence and Submissions

- [9] The Landlord testified that on September 4, 2023 he received notice from the Tenants that they were vacating. The Landlord testified that he did not receive any written notice from the Tenants, and that the Tenants are required to give 1-month notice. The Landlord testified that he was not able to re-rent it and kept the security deposit for October 2023 rent.
- [10] The Landlord testified that he does not have an e-mail for the Tenants. The Landlord testified that he did not receive the e-mails that were submitted into evidence. The Landlord admitted to not filing an application with the Rental Office for the security deposit.

Analysis

- [11] The Application is made in accordance to clause 75 of the Act, and is seeking a finding that the Landlord breached clause 40(1) of the Act. The relevant law is as follows:

59. Application respecting contravention

*Where a landlord contravenes the obligations set out in sections 22 to 24 and 26 to 29, a material term of the tenancy agreement **or a statutory condition set out in Part 2**, the tenant may make an application to the Director under section 75 for an order as specified under subsection 85(1). 2022, c.88, s.59. [emphasis added]*

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.*

- [12] Further, the Island Regulatory and Appeals Commission (the “Commission”) in **Order LR23-69**, paragraph [15] made comments as it relates to section 40 of the Act:

- [15] *“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...”*

- [13] To begin, the Officer finds that on or around September 3, 2023 the Tenants provided notice to the Landlord that they were vacating the Rental Unit on October 1, 2023. The evidence establishes that the Tenants did vacate the Rental Unit on October 1, 2023. However, clause 55(2) of the Act requires a tenant who is party to a month-to-month tenancy agreement to provide 1-month notice, and that the last day of the tenancy is the day before the day that rent is due.

- [14] In this case, the tenancy would have ended October 31, 2023, unless the Rental Unit was re-rented, sublet and/or assigned. The evidence does not suggest the Rental Unit was re-rented, subletted and/or assigned before October 31, 2023.
- [15] After a review of the evidence and the testimony of the parties, the Officer concludes that the Tenants are entitled to a return of the security deposit and interest. Despite the finding that the Tenants provided improper notice to the Landlord, the Officer finds that the evidence establishes that the Landlord did not file an application (Form 2(B)) with the Rental Office within 15 days of the end of the tenancy. The Officer notes that the Tenants vacated on October 1, 2023 but the tenancy did not end until October 31, 2023, so the Landlord had until November 15, 2023 to either return the full amount of the security deposit and interest or file an application with the Rental Office to retain the security deposit. The Officer finds that the evidence establishes that the Landlord did neither option required by clause 40(1) of the *Act*.
- [16] Further, the evidence provided does not reveal a set of facts and/or circumstances that the Landlord would be exempted under clauses 40(2) or (3) of the *Act*. Such ignorance of the law and/or non-compliance of the *Act* by the Tenant(s) shields the Landlord from, as the Commission described as, *the rigours of section 40*.
- [17] Therefore, the Officer concludes that the Landlord did not comply with clause 40(1) of the *Act* and is not exempted under clauses 40(2) and/or (3). Such non-compliance of clause 40(1) triggers clause 40(4) of the *Act*. As a result, the Landlord cannot make a claim against the security deposit and the Tenants are entitled to a return of their security deposit, including double the balance of the security deposit and interest on the principle amount. The Application is allowed.

Conclusion

- [18] The Application is allowed. The Tenant's compensation is calculated as follows:

Item	Amount
Security Deposit Balance	\$1,300.00
Interest (08/15/23 – 02/28/24)	\$17.09
Double Awarded	\$1,300.00
Total Compensation Awarded	\$2,617.09

- [19] Pursuant to clause 14(9) of the *Act*:

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.

- [20] The interest accrued is adjusted to the date this Order is issued.
- [21] The Landlord shall pay the Tenants \$2,617.09 forthwith.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$2,617.09 forthwith.

DATED at Charlottetown, Prince Edward Island, this 28th day of February, 2024.

(sgd.) Cody Burke

Cody Burke
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.