

Introduction

- [1] On December 6, 2023, the Subtenant 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 \$800.00 pursuant to section 59 of 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 13, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Subtenant and the Tenant participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] On August 1, 2023, the parties entered into a written month-to-month tenancy agreement for the rental unit, which consisted of a room and shared common spaces in a half-duplex (the "Residential Property"). Rent was \$800.00 due on the first day of the month. A security deposit of \$800.00 was required and paid. The Subtenant vacated the rental unit on October 1, 2023.

Subtenant's Evidence and Submissions

- [5] The Subtenant submitted a copy of the tenancy agreement as well as two videos of the rental unit into evidence. The Subtenant stated nothing was broken or dirty when she vacated. She denied taking the items alleged by the Tenant. She stated she left bags of garbage outside and not in the rental unit when she vacated. She acknowledged that she damaged the window ledge but stated it would not cost the whole security deposit to repair.

Tenant's Evidence and Submissions

- [6] The Tenant submitted several videos and photographs of the rental unit into evidence. He stated the Subtenant left the rental unit dirty when she vacated. Her candles damaged a dresser, the desk and sheets were greasy, and there were burn marks on the window ledge. He was required to clean the floor and fridge and had to clean up the Subtenant's garbage she left outside because birds damaged the bags. The Tenant stated he is missing a frying pan and tv cord and stated they must have been taken by the Subtenant.

Analysis

- [7] 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.

- [8] 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...

- [9] The Officer finds the evidence establishes the tenancy agreement ended on October 1, 2023. That means the Tenant had until October 16, 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 Tenant did neither.

- [10] 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 Tenant 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 Subtenant is entitled to a return of their security deposit, including double the security deposit, and interest accrued on the principle amount.

Conclusion

- [11] The Application is allowed.
- [12] The Tenant shall pay the Subtenant \$1,611.29 on or before March 31, 2024. The Officer's calculations are as follows:

Item	Amount
Security Deposit	\$800.00
Interest (Aug. 1/23 – Feb. 28/24)	\$11.29
Security Deposit (Double Awarded)	\$800.00
Total Compensation Awarded	\$1,611.29

- [13] 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 Tenant shall pay the Subtenant \$1,611.29 on or before March 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 28th 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.