

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 \$1,900.00 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 9, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a Landlord Representative, and a Landlord witness participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [4] On May 1, 2023, the parties entered into a verbal month-to-month tenancy agreement for the Residential Property. Rent was \$1,900.00 due on the last day of the month. A security deposit of \$1,900.00 was required and paid. The Tenant vacated the Residential Property on September 6, 2023, as a result of an eviction notice.

Tenant's Evidence and Submissions

- [5] The Tenant did not submit any evidence but did participate in the hearing. He stated the Representative did not tell him she was keeping the security deposit until after he asked her about it. He stated he cleaned before he vacated the rental unit. He stated his hot coffee pot did damage part of the rental unit and he agreed that the Landlord could keep \$900.00 of the security deposit for those damages. He is requesting a return of the remainder of the security deposit.

Landlord's Evidence and Submissions

- [6] The Representative submitted several documents into evidence including a copy of the tenancy agreement, photographs of the rental unit, text messages between the parties, invoices and receipts. She stated the Tenant was evicted due to non-payment of rent and utilities.
- [7] The Representative stated the counter and freezer in the rental unit were damaged from a hot coffee pot and the blinds were also damaged. She stated repairing and replacing these three items will cost more than the security deposit. Other damaged items include the cupboards, stove, window screens, and floors. There is water damage in the bathroom and a wall is required to be rebuilt as a result.
- [8] The Landlord's witness stated he observed damages to the floors, blinds, countertop, and freezer after the Tenant vacated. Food and belongings were left behind by the Tenant and there was a rotten smell in the rental unit. He was required to do extensive cleaning in the rental unit and there was water damage in the bathroom.

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 September 6, 2023. That means the Landlord had until September 21, 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] The Officer does not find the facts of this case permit the exceptions stated in subsections 40.(2) and/or (3) of the Act to allow the Landlord to retain the security deposit. 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 the security deposit, including double the security deposit, and interest accrued on the principle amount.

[13] The Officer further finds the Tenant stated at the hearing that he will permit the Landlord to retain \$900.00 of the security deposit to cover damages.

Conclusion

[14] The Application is allowed.

[15] The Landlord shall pay the Tenant \$2,938.77 on or before March 31, 2024. The Officer's calculations are as follows:

Item	Amount
Security Deposit	\$1,900.00
Interest on \$1,900.00 (May. 1/23 – Feb. 28/24)	\$38.77
Security Deposit Double Awarded	\$1,900.00
Minus amount retained by the Landlord	(\$900.00)
Total Compensation Awarded	\$2,938.77

[16] 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 \$2,938.77 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.