

Introduction

- [1] On January 10, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (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 Tenant is seeking the return of their security deposit in the amount of **\$462.50** 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 15, 2024 a teleconference hearing was held at 9:00 a.m. before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing themselves. The Landlord appeared, representing the Landlords and the Landlords had a witness appear.

Issue to be Decided

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

Summary of the Evidence

- [5] On February 15, 2021 the Landlord and the Tenant along with three other co-tenants entered into a written fixed term tenancy agreement. Once the fixed term expired, the agreement converted to a month-to-month agreement. Rent was \$1,850.00 due on the 15th day of each month. A security deposit of \$1,850.00 was paid. The four co-tenants split the costs and the Tenant's portion of the security deposit in question is \$462.50.

Tenant's Evidence and Submissions

- [6] The Tenant testified that the arrangement for paying the Landlords was that herself and the other co-tenants would e-transfer their share of the money to one specific tenant (the Landlords' witness) every month. The Tenant testified that due to sickness she provided the Landlords with 30 days' notice that she was vacating the Rental Unit. The Tenant testified that she vacated on or around November 22, 2023, however, she paid rent until December 15, 2023.
- [7] The Tenant testified that she was waiting for her share of the security deposit to be returned, but the Landlords never returned it. The Tenant testified that she reached out to the Landlords, and that she was informed by the Landlords that the security deposit was given to another co-tenant (the witness for the Landlords).
- [8] The Tenant testified that the Landlords' witness kept the security deposit because she deducted cleaning and housing supplies, along with electricity and internet bills that she owed from the security deposit. The Tenant testified that she knew she owed some money for the electricity and internet; however, disagreed with some of the Landlords' witness calculations.
- [9] The Tenant testified that she did not receive any application from the Landlords and believes a new tenant has since moved into the Rental Unit.

Landlords' Evidence and Submissions

- [10] The Landlord testified that her witness who is a co-tenant is the primary contact in the tenancy agreement. The Landlord testified that the tenancy still continues and once it ends there will be a full inspection of the Rental Unit as all the co-tenants are part of the tenancy (including the Tenant). The Landlord admitted that she was aware that a new tenant moved into the Rental Unit on December 15, 2023.

- [11] The Landlord testified that on December 15, 2023 she entered into a new tenancy agreement with the remaining three co-tenants. On December 15, 2023 she permitted a sublet for the Tenant's former room.
- [12] The witness for the Landlord testified that there was miscommunication between the parties, and that she did not have the Tenant's security deposit. The witness testified that she held the new subtenant's security deposit (which is the same amount as the Tenant's security deposit). No money was transferred between the Landlord and the witness. The witness testified that the Tenant was regularly behind on her portion of the bills. The witness testified that she calculated the outstanding bills for the Tenant, however, due to a breakdown in communication never informed the Tenant of the outstanding balance. The witness provided testimony with details regarding the on-going dispute she has with the Tenant.

Analysis

- [13] The Application is made in accordance to clause 75 of the Act, and is seeking a finding that the Landlords 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.*

- [14] 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...”*
- [15] The Officer notes that a portion of the parties’ testimony was regarding an on-going dispute between the Tenant and a co-tenant (who was a witness for the Landlord). The Officer does not have the legislative authority to adjudicate such a dispute as it is a “tenant-to-tenant” dispute.
- [16] However, as it relates to the issue of the security deposit the Officer notes that the Tenant provided notice to the Landlord and vacated the Rental Unit on or around November 22, 2023. The Tenant’s rent was paid to December 15, 2023. The evidence of the parties establishes that on December 15, 2023 the Landlord entered into a new tenancy agreement with the remaining three co-tenants. Further, the cotenants were approved to have a subtenant move into the Rental Unit on December 15, 2023 and take over the financial responsibilities of the Tenant.
- [17] Therefore, the Officer finds that the tenancy between the Landlord and the Tenant ended on December 15, 2023. 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 Landlord had until December 30, 2023 to either return 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*.
- [18] Further, the evidence 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*. Despite the Landlord not being aware of the application requirement and/or relying on the witness to be the main point of contact, does not shield the Landlord from, as the Commission described as, *the rigours of section 40*.
- [19] 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) 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 Tenant is 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

- [20] The Application is allowed. The Tenant’s compensation is calculated as follows:

Item	Amount
Security Deposit Balance	\$462.50
Interest (02/15/21 – 03/01/24)	\$14.31
Double Awarded	\$462.50
Total Compensation Awarded	\$939.31

- [21] 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.

- [22] The interest accrued is adjusted to the date this Order is issued.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$939.31 forthwith.

DATED at Charlottetown, Prince Edward Island, this 1st day of March, 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.