

Introduction

- [1] On January 24, 2024 the Tenants 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 Tenants are seeking the return of their security deposit in the amount of **\$600.00** 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 22, 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 did not have a representative appear on its behalf.

Issue to be Decided

- i. Are the Tenants entitled to a return of the security deposit?

Summary of the Evidence

- [5] On December 8, 2023 the parties entered into a verbal month-to-month tenancy agreement for the Rental Unit. Rent was \$900.00 due on the 13th day of each month. A security deposit of \$600 was paid on December 6th, 2023.

Tenants’ Evidence and Submissions

- [6] The Tenant testified that they were not satisfied with the condition of the Rental Unit, and on January 4, 2024 she informed the Landlord’s representative that they would be vacating the Rental Unit. The Tenant testified that on January 8, 2024 they vacated the Rental Unit. The Tenant testified that on January 23, 2024 the Landlord’s representative informed her that they were not going to receive their security deposit back. The Tenant testified that the Landlord’s representative did not give them any application and/or notices.

Landlord’s Evidence and Submissions

- [7] The Landlord did not have any representatives at the hearing and did not submit any evidence.

Analysis

- [8] 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.*

- [9] 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...”*

- [10] To begin, the Officer finds that on January 4, 2024 the Tenants provided notice to the Landlord’s representative that they were vacating the Rental Unit on January 8, 2024. The Officer notes that clause 55(2) of the Act requires a tenant who is party to a month-to-month agreement to provide 1-month notice, and that the last day of the tenancy is the day before the day rent is due.
- [11] After a review of the evidence and the testimony of the Tenant, 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 finds that the evidence establishes that the Landlord did not follow the requirements of clause 40(1) of the Act.
- [12] Further, the evidence provides 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*.
- [13] 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

[14] The Application is allowed. The Tenants' compensation is calculated as follows:

Item	Amount
Security Deposit Balance	\$600.00
Interest (12/6/23 – 03/06/24)	\$3.50
Double Awarded	\$600.00
Total Compensation Awarded	\$1,203.50

[15] 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.

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

[17] The Landlord shall pay the Tenants \$1,203.50 forthwith.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenants \$1,203.50 forthwith.

DATED at Charlottetown, Prince Edward Island, this 6th 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.