

Introduction

- [1] On January 12, 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 **\$2,100.00** plus interest.
- [3] All documents (including the Application, *Notice of Hearing* and *Evidence Package*) were properly served to the parties in accordance with clause 100(1) of the Act.
- [4] On February 27, 2024 a teleconference hearing was held at 9:00 a.m. before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing the two Tenants. The Landlord had a representative appear on their behalf (the "Representative").

Issue to be Decided

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

Summary of the Evidence

- [5] In April 2023 the parties entered into a written fixed term tenancy agreement. The fixed term expired on August 31, 2023 and the parties renewed the fixed term for September 1, 2023 to August 31, 2024. Rent was \$2,100.00 due on the first day of the month. A security deposit of \$2,100.00 was required and paid.
- [6] The parties submitted 50-pages of documents into evidence.

Tenants' Evidence and Submissions

- [7] The Tenant testified that on October 10, 2023 she informed the Representative that they would be vacating by November 1, 2023. The Tenant testified that they vacated on October 31, 2023 from the Rental Unit. The Tenant testified that she requested the security deposit be returned on numerous occasions from the Representative. The Tenant testified that the Representative informed her that once a new tenant was found the security deposit would be returned. The Tenant testified that the Rental Unit was advertised, however, the Tenant had no contact with the Representative after November 1, 2023.
- [8] The Tenant testified that she did not receive any application and/or form from the Representative.

Landlord's Evidence and Submissions

- [9] The Representative testified that the Tenants provided insufficient notice to end a fixed term agreement. The Representative testified that the Rental Unit was advertised and that a new tenant was found on November 26, 2023. The Representative testified that he had to vet the prospective tenants and that can take time, and that the Tenants brought some tenants forward that did not pass the vetting process. The Representative testified that he was retaining the security deposit to cover November 2023 rent. The Representative testified that he did not receive any form and/or any written notice from the Tenants. The Representative admitted that the Landlord did not file an application with the Rental Office.

Analysis

- [10] The Application is made in accordance with 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). [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. [emphasis added]

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.

- [11] 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...”*

- [12] The Officer finds that on October 10, 2023, the Tenants provided notice to the Representative that they were vacating the Rental Unit by November 1, 2023. The testimony from the parties suggests that the Tenants vacated on October 31, 2023. However, the Officer notes that clause 55(2) of the Act requires a tenant, who is party to a fixed term agreement, to provide at least 60 days’ notice before the end of the fixed term. Proper notice only terminates the tenancy agreement as of the last day of the term, in this case, August 31, 2024.

- [13] However, there are additional ways a tenancy agreement can be ended. The evidence establishes that the Rental Unit was re-rented as of November 26, 2023, which ended the Tenants' tenancy agreement.
- [14] 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 Officer's 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 from the end of the tenancy. The Officer notes that the Tenants vacated on October 31, 2023, and the Rental Unit was re-rented on November 26, 2023. Thus, the Landlord had until December 11, 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 evidence establishes that the Landlord exercised neither option required by clause 40(1) of the *Act*.
- [15] Further, the evidence and the testimony provided does not reveal a set of fact and/or circumstances that would exempt the Landlord under clauses 40(2) or (3). The Officer finds that ignorance of the law, and/or such non-compliance of the *Act* by the Landlord does not provide a shield from the *rigours of section 40*.
- [16] 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 Tenants are entitled to a return of their security deposit, including double the balance of the security deposit and the interest on the principle amount. The Application is allowed.

Conclusion

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

Item	Amount
Security Deposit	\$2,100.00
Interest (04/01/23 – 03/12/24)	\$48.72
Security Deposit (Double Awarded)	\$2,100.00
Total Compensation Awarded to Tenants	\$4,248.72

- [18] 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.

- [19] The interest accrued is calculated to the date this Order is issued.
- [20] The Landlord shall pay the Tenants \$4,248.72 by March 31, 2024.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenants \$4,248.72 by March 31, 2024.

DATED at Charlottetown, Prince Edward Island, this 12th 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.