

## Introduction

- [1] On January 29, 2024 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed to make a claim against the security deposit pursuant to clause 40(1) of the *Residential Tenancy Act* (the "Act").
- [2] The Landlord is seeking an order that he can retain the security deposit in the amount of \$950.00.
- [3] All documents (including the Application, the *Notice of Hearing* and the *Evidence Package*) were properly served pursuant to clause 100(1) of the *Act*.
- [4] On March 7, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Landlord appeared, representing themselves. The Tenant did not appear, and did not have representation. The hearing was delayed ten minutes, and the Tenant could not be reached. The hearing proceeded in the Tenant's absence.

## Issue to be Decided

- i. Is the Landlord entitled to retain the security deposit?

## Summary of the Evidence

- [5] On November 19, 2023 the parties entered into a written fixed term tenancy agreement for the Rental Unit. Rent was \$950.00 due on the first day of the month. A security deposit of \$950.00 was required and paid on November 27, 2023.

### Landlord's Evidence and Submissions

- [6] The Landlord testified that on January 23, 2024 he was informed by the Tenant via text message that the Tenant vacated the Rental Unit. The Landlord testified that the Tenant vacated on January 17, 2024 due to a disagreement over the tenancy agreement and other allegations against the Landlord. The Landlord testified that he advertised the Rental Unit immediately. The Landlord testified that he inspected the Rental Unit and had no concerns regarding the condition it was in. The Landlord testified that he is retaining the security deposit to cover for February 2024 rent due to improper notice.
- [7] The Landlord submitted into evidence a copy of the tenancy agreement, and numerous photos of the advertisement for the Rental Unit, and text message conversations between the parties.

### Tenant's Evidence and Submissions

- [8] The Tenant did not submit any evidence and did not participate in the hearing.

## Analysis

[9] The Application is made pursuant to clause 75 of the *Act*, and is seeking to make a claim against the security deposit and interest, pursuant to clause 40(1) of the *Act*. The relevant law is as follows:

**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.*

[10] Further, clauses 19(1), 46, and 55(3) of the *Act* states:

**19. Tenant shall pay rent when due**

(1) *A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.*

**46. Mitigation of damages**

*Where a tenant abandons the rental unit, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.*

**55. Notice for fixed-term tenancy**

(3) *A tenant may end a fixed-term tenancy by giving the landlord a notice of termination effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice;*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and*

*(c) is the day that rent is payable under the tenancy agreement.*

[11] In such matters where there is a claim made against the security deposit, it is the landlord's burden to prove, on a balance of probabilities, any and all claims made against the security deposit. This means that the decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim(s) made against the security deposit.

[12] The Officer concludes that the Landlord is entitled to retain the security deposit. The photos submitted into evidence of the text message conversations between the parties establishes that the Tenant vacated the Rental Unit on January 17, 2024, without providing proper notice. The Landlord provided a copy of the tenancy agreement into evidence to establish that the tenancy was for a fixed-term, and that the Tenant did not comply with the notice requirements, pursuant to clause 55(3) of the *Act*.

[13] Further, the Officer finds that the Landlord has provided sufficient evidence that he has taken reasonable steps to mitigate his losses by advertising the Rental Unit immediately after getting notice from the Tenant, as required by clause 46 of the *Act*. The Landlord has established a valid claim against the full amount of the security deposit for loss of February 2024 rent.

**Conclusion**

- [14] The Application is allowed. The Landlord shall retain the full amount of the security deposit in the amount of \$950.00.
- [15] The Landlord shall return the interest in the amount of \$6.83 to the Tenant.
- [16] 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.*

- [17] The interest accrued is calculated to the date this Order is issued.
- [18] **Order LD24-095 will be served to the parties by e-mail.**

**IT IS THEREFORE ORDERED THAT**

- A. The Landlord shall retain \$950.00 from the security deposit.
- B. The Landlord shall pay the Tenant \$6.83 in interest on or before April 9, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 18th day of March, 2024.

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(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.