

Introduction

- [1] On February 16, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for double the security deposit and bad faith compensation.
- [2] On February 26, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 9:00 a.m. on March 19, 2024.
- [3] On March 1, 2024 the Rental Office emailed the parties a revised notice of a teleconference hearing scheduled for 11:00 a.m. on March 19, 2024.
- [4] On March 15, 2024 the Rental Office emailed the parties an evidence package.
- [5] On March 19, 2024 the hearing time was moved from 11:00 a.m. to 1:00 p.m. The Tenant and the Landlord participated in a teleconference hearing before the Residential Tenancy Officer (the “Officer”) for determination of the Application.

Issues to be Decided

- i. Must the Landlords pay double the security deposit to the Tenant?
- ii. Has the Tenant established a valid claim for bad faith compensation?

Preliminary Matters

- [6] At the beginning of the hearing the Application was amended to include both of the Landlords’ names.
- [7] The Officer permitted the parties to submit additional evidence after the hearing. The Tenant submitted an additional nine-page document and the Landlords submitted two one-page documents, which form part of the record.

Summary of the Evidence

- [8] The Unit is a one-bedroom, one-bathroom apartment located in a four-unit building (the “Residential Property”), with the other units being 25A, 27A and 27B.
- [9] On April 3, 2022 the Tenant and the former owner of the Residential Property (the “Former Landlord”) entered into a written, fixed term tenancy agreement for the period of May 1, 2022 to April 30, 2023. The Tenant moved into the Unit on April 15, 2022, before the fixed term commenced. On April 3, 2022 the Tenant paid the Former Landlord a \$995.00 security deposit. The Tenant stated that the Unit’s monthly rent at the beginning of the tenancy was \$995.00.
- [10] On April 4, 2023 the Tenant and the Former Landlord entered into a second fixed term agreement for the period of May 1, 2023 to April 30, 2024. Rent in the amount of \$1,050.00 was due on the first day of the month.
- [11] On September 29, 2023 the Landlords purchased the Residential Property from the Former Landlord and the tenancy continued.

Tenant’s Evidence and Submissions

- [12] The Tenant’s evidence is summarized as follows.

- [13] The rent for the Unit in 2022 was \$995.00 per month. When the tenancy agreement was renewed on April 4, 2023, the Tenant and the Former Landlord agreed that the monthly rent would be increased to \$1,050.00 because the Former Landlord's operating costs had increased. The Tenant did not receive a rent increase notice and the Tenant is not aware of any Rental Office hearing regarding the rent increase.
- [14] On October 2, 2023 the Tenant and the Landlord met in person. The Landlord advised the Tenant that his family wanted to move into the Unit when the fixed term ended. The Landlord did not provide the Tenant with any written notice or written request to end the tenancy, including emails or text messages. With regard to the Landlord's evidence in paragraph [31], below, the Tenant does not recall the Landlord offering to extend that tenancy into May 2024 for graduation.
- [15] On October 14, 2023 the Tenant messaged the Landlord asking if, in the event the Tenant secured a new rental unit, the tenancy could be ended early and the security deposit returned. The Landlord responded stating that he had a "cash crunch" and would need time to return the security deposit.
- [16] On October 25, 2023 the Tenant sent the Landlord another message stating that she had found a new rental unit and she wanted to move out of the Unit by the end of November 2023. The Landlord responded stating that he would be able to pay the security deposit by the week of January 1, 2024. The Tenant messaged the Landlord stating that she was in agreement.
- [17] On November 20, 2023 the Tenant had all of her belongings removed from the Unit. On November 24, 2023 the Tenant completed cleaning the Unit and left behind the keys for the Landlords. Shortly thereafter the Landlord messaged the Tenant stating *"Thanks for keeping the apartment clean and intact. Much appreciated."*
- [18] The Tenant's position is that the tenancy agreement ended by a combination of notice and agreement.
- [19] On November 28, 2023 the Tenant found a listing for the Unit on Facebook Marketplace posted by one of the Landlords. The advertised rent was \$1,600.00, an increase of \$550.00 from the rent the Tenant had been paying.
- [20] On December 27, 2023 the Landlord messaged the Tenant stating that he was having serious financial trouble and he would not be able to pay the security deposit in January. The Landlord stated he definitely would try and send the security deposit by February 15, 2024. The Tenant responded stating that she was also having financial hardships and it would be helpful to have the security deposit by February.
- [21] On January 22, 2024 the Tenant messaged the Landlord requesting that the security deposit payment be moved from February 15 to February 1, 2024. The Landlord did not respond to the Tenant's message.
- [22] On February 10 and 15, 2024 the Tenant sent additional messages and the Tenant telephoned the Landlord requesting the return of her security deposit. The Tenant noticed that none of these messages were delivered and the Tenant's telephone calls did not go through. The Tenant was able to leave a voicemail message for the Landlord but she did not receive a response.
- [23] Later in the day on February 15, 2024 the Tenant called the Landlord from a different telephone number and the Landlord answered the call. The Landlord told the Tenant that he planned on sending her the security deposit first thing the next morning. The Tenant advised the Landlord of the attempts she had made to contact him. The Tenant told the Landlord that if she did not receive the security deposit first thing the next morning then she would contact the police and file a complaint. The Landlord became upset and questioned why she would file a complaint. Even though the Landlord was upset, at the end of the call he confirmed he would return the security

deposit the next morning. The Tenant disputes the Landlord's characterization of the telephone call in paragraph [36], below. The Tenant was calm and did not raise her voice during the call.

- [24] On February 16, 2024 the Tenant did not receive the security deposit from the Landlords. The Tenant filed the Application and emailed and text messaged the Landlords a copy of the Application. The Tenant messaged the Landlords from a third party number because messages from the Tenant's number were not going through.
- [25] As of March 19, 2024 the Tenant has not received any of her security deposit from the Landlords.
- [26] The Tenant believes that the Unit (25B) is shown in the Landlords' November 28, 2023 advertisement. The Tenant had viewed unit 25A before she decided to move into the Unit. Unit 25A is much larger than the Unit and the layout is different. The photograph shown in page 23 of the Evidence Package shows an elevated view of the outside, which is the Unit, located upstairs. Unit 25A has a door to the backyard and the Unit does not have a door to the backyard. Unit 25A and the Unit were newly renovated when the Tenant first moved in and are completely different from units 27A and 27B. The Tenant was friends with the tenant of unit 27B, who moved out near the end of July 2023. The Tenant has been inside unit 27B, but not unit 27A.
- [27] The Tenant submitted into evidence a copy of her new tenancy agreement. The monthly rent for the new unit is \$1,250.00 and a parking spot and onsite laundry facilities are also included in the new rent. However, the Tenant does not have a vehicle and the laundry services require payment per use.

Landlords' Evidence and Submissions

- [28] The Landlords' evidence is summarized as follows.
- [29] Prior to the hearing, the Landlord has not seen the 2022 tenancy agreement for the Unit. The Landlord had only seen the 2023 agreement.
- [30] On September 29, 2023, when the Landlords purchased the Residential Property, the Landlords were credited \$995.00 by the Former Landlord for the Tenant's security deposit.
- [31] In early October 2023 the Tenant and the Landlord met in person. The Landlord told the Tenant that his family wanted to move into the Unit by April 30, 2024. However, the Landlord knew the Tenant was a student and he was willing to provide the Tenant with more time if needed for graduation.
- [32] On November 24, 2023 the Landlords received the keys that the Tenant had left at the Unit. The Landlord described the condition of the Unit at the end of the tenancy as *"absolutely clean."*
- [33] On December 27, 2023 the Landlord messaged the Tenant and told her that he could not pay the security deposit in January. The Landlord had expenditures, including a visit to his home country. The Landlord told the Tenant that he could pay the security deposit by February 15, 2024. The Tenant replied the same day and it was the Landlord's understanding that the Tenant agreed to the security deposit being returned by the end of February.
- [34] By the end of January, the Landlord received another message from the Tenant requesting the return of the security deposit by February 1, 2024. The Landlord and the Tenant had a telephone call and he agreed to pay the security deposit by mid-February 2024.
- [35] The Landlord does not know why he was not receiving some of the Tenant's text messages or telephone calls.

- [36] On February 15, 2024 the Landlord received a telephone call from the Tenant from an unknown number. The Landlord told the Tenant that he would pay back the security deposit the morning of February 16, 2024. The Tenant began shouting and she told the Landlord that if she did not receive the security deposit by noon then she would go to the police. The Landlord felt this was disrespectful and the Landlord ended communication with the Tenant. The Landlord was expecting to receive his salary on February 16, 2024 and he intended to use these funds to return the Tenant's security deposit.
- [37] On February 16, 2024 the Landlords received the Application from the Tenant by text message.
- [38] As of March 19, 2024 the Landlords have not returned any of the Tenant's security deposit. However, the Landlords are willing to pay the security deposit to the Tenant immediately. The Landlords oppose paying double the security deposit to the Tenant.
- [39] The Residential Property is currently occupied by: (1) the Landlord's father (unit 25A); (2) the Landlords and another family member (the Unit, 25B); (3) the Landlord's brother and a friend (unit 27A); and a residential tenant (unit 27B).
- [40] The Landlord submitted into evidence documents listing the Unit as his place of residence. The November 28, 2023 Facebook Marketplace advertisement shows unit 25A, the downstairs apartment. Unit 25A and the Unit have similar layouts.
- [41] The Landlord submits that, if the Tenant is entitled to compensation, then the Landlords are entitled to rent owing for the balance of the fixed term, until April 30, 2024.
- [42] The Landlords oppose paying bad faith compensation to the Tenant and the Landlords do not have the financial ability to pay the amount claimed.

Analysis

Claim for Double the Security Deposit

- [43] Subsections 14(2), (6), (7), (8) and (9) of the *Residential Tenancy Act*, RSPEI 1988, R-13.11 (the "Act") state:
- (2) A security deposit is not an asset of the landlord but is held by the landlord in trust and shall be used, retained or disbursed only as provided in this Act.*
- (6) Upon receipt of a security deposit, the landlord shall give the tenant a written receipt stating the amount of the security deposit, the date of receipt, and the rental unit and residential property to which it applies.*
- (7) Within two banking days of receipt of a security deposit, the landlord shall deposit it in an interest-bearing account located in the province at a financial institution authorized to accept deposits.*
- (8) Where a landlord has three or more rental units, the interest-bearing account referred to in subsection (7) shall be a trust account used exclusively for security deposits.*
- (9) 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.*
- [44] The Landlords' evidence establishes that security deposit funds of \$995.00 were credited to the Landlords when they purchased the Residential Property from the Former Landlord on September 29, 2023.

- [45] The Tenant's security deposit is not an asset of the Landlords and it should have been held in trust for the benefit of the Tenant. The Landlords were supposed to put the Tenant's security deposit in an interest bearing account within two banking days of receiving the funds, by October 4, 2023 (Monday, October 2, 2023 was a federal holiday).
- [46] The Landlords were required to follow these legal requirements for holding the Tenant's security deposit. At all times after September 29, 2023 these funds should have been readily available to the Landlords. The Landlords should never have needed to request multiple extensions to gather funds to repay the security deposit.
- [47] Subsection 40(1) provides the 15-day deadline for retaining or returning a security deposit:
- 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.*
- [48] The Landlords made no application to the Rental Office and the exceptions in subsections 40(2) and (3) are not applicable to this case.
- [49] Although the Tenant described the end of the tenancy as a mix of notice and agreement, there is no document before the Officer that can be characterized as a notice of termination. Instead, the evidence of the parties establishes that there was a mutual agreement to end the tenancy as of November 30, 2023. The latest date that the security deposit should have been returned to the Tenant was December 15, 2023.
- [50] Section 5 of the Act states:
- Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.*
- [51] Any waiver or release by the Tenant to the Landlords of issuing security deposit payment past the 15-day deadline was void and of no effect. The Landlords delayed returning the security deposit funds past December 15, 2023 at their own peril.
- [52] The Landlord admitted at the hearing that the Tenant left the Unit in "*absolutely clean*" condition. One would have hoped that the security deposit funds, which were supposed to be held in trust by the Landlords, would have been immediately returned to the Tenant in these circumstances.
- [53] Subsection 40(4) of the Act states:
- (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.*
- [54] In Order LR23-76 the Island Regulatory and Appeals Commission (the "Commission") discussed the security deposit portion of the Act, stating as follows:

“12. The Residential Tenancy Act (“the Act”) became law on April 8, 2023. Section 40 of the new Act governs the return of security deposits and sets the requirements a landlord must follow in order to make a claim against a security deposit.

13. The new RTA imposes a strict 15-day time limit. A landlord is required to either return the security deposit or make an application to the Director claiming against the security deposit, within 15 days after the tenancy ends (subsection 40(1)). Where a landlord does not comply with subsection 40(1), they are prohibited from claiming against the security deposit and must pay the tenant “double the amount of the security deposit” (subsection 40(4)).

14. The policy behind the security deposit provisions in the new RTA appears to be to prevent landlords from withholding money from their tenants for long periods of time without actually making an application to claim against the security deposit. The new RTA puts the onus on a landlord to bring proceedings to prove his or her right to the tenant’s security deposit rather than putting the onus on the tenant to bring proceedings to get the security deposit back...

16. The language of section 40(4) is non-discretionary. Both the Commission and the Rental Office are administrative bodies created by statute and are bound to apply the legislation as written. In this case, the Landlord failed to comply with the requirements of the RTA and did not file an application with the Rental Office to make a claim against the security deposit within 15 days. Therefore, the consequences set out in subsection 40(4) apply.

17. Accordingly, the Commission agrees with the outcome of Order LD23-456 and this appeal is dismissed. The Landlord shall pay the Tenants double the amount of the outstanding security deposit, plus accrued interest on the original (non-doubled) deposit amount...”

- [55] Generally speaking, subsection 40(4) is a safeguard against a landlord having a routine practice of retaining security deposits.
- [56] If there was no consequence for failing to retain or return a security deposit within the 15-day deadline of subsection 40(1), then a landlord could take a “wait and see approach.” A landlord could keep a security deposit and wait to see if a tenant files an application with the Rental Office. If a tenant does not file an application within the limitation period, then a landlord would keep the security deposit. If a tenant does file an application, then a landlord would then decide to return the security deposit or wait longer, until a full hearing is completed and a Rental Office order mandating payment. Aside from a nominal amount of interest accrued on the security deposit, there would be no financial disincentive for a landlord following this approach.
- [57] When the Act became law on April 8, 2023, serious consequences were implemented for the improper retention of security deposits. A landlord who does not retain or return a security deposit in accordance with section 40 does so at the peril of being ordered to pay double the security deposit. This legal consequence deters the “wait and see approach” discussed above.
- [58] As of the hearing date on March 19, 2024, being 110 days since the tenancy ended on November 30, 2023, the Landlords had not returned the Tenant’s security deposit. The Landlords must now pay the Tenant double the security deposit and interest on the original security deposit amount.
- [59] Section 104 of the Act states:

The obligations of a landlord under this Act with respect to a security deposit pass to a person who acquires the interest of the landlord in the rental unit.

- [60] The Landlords are responsible for interest on the security deposit calculated from the date it was paid to the Former Landlord. The accrued interest from April 3, 2022 to March 22, 2024 totals \$29.89.
- [61] The amount payable by the Landlords to the Tenant regarding the security deposit is calculated as follows:

Item	Amount
Security Deposit	\$995.00
Interest	\$29.89
Security Deposit (Double Awarded)	\$995.00
Total	\$2,019.89

- [62] As determined in paragraph [49] above, the tenancy ended on November 30, 2023 by mutual agreement. The Landlords cannot claim against the Tenant for rent owing for any period after November 30, 2023.

Claim for Bad Faith Compensation

- [63] Section 65 of the *Act* allows a tenant to make a monetary claim against a landlord if an eviction notice is served in bad faith for the landlord's use of property (section 62), purchaser's use of property (section 63) or demolition, conversion, repairs and renovations (section 64). Service of a notice of termination is a required element for making a valid claim for bad faith compensation.

- [64] Section 53 sets out the form and content requirements of a notice of termination, stating:

In order to be effective, a notice of termination shall be in writing and shall
(a) be signed and dated by the landlord or tenant giving the notice;
(b) give the address of the rental unit;
(c) state the effective date of the notice;
(d) except for a notice of termination under section 56, state the grounds for ending the tenancy;
(e) be given to the other party in accordance with section 100; and
(f) when given by a landlord, be in the approved form.

- [65] As determined by the Officer in paragraph [49], above, the tenancy ended by mutual agreement. There is no document before the Officer that can be properly characterized as a notice of termination. The Officer has considered section 30 of the *Interpretation Act*, RSPEI 1988, I-8.1 in making this determination.

- [66] In the book *Administrative Law in Canada* (Sara Blake, 7th ed., §4.03) the following is stated:

"Compensation may not be awarded without express statutory authority."

- [67] The Officer finds that, without service of a notice of termination, the Officer does not have authority to award bad faith compensation pursuant to section 65 of the *Act*.

- [68] Section 57 of Ontario's *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 is similar to section 65 of the *Act*. It appears that Ontario's Landlord and Tenant Board has also found that service of a notice of termination is an essential element for awarding bad faith compensation (see the following Landlord and Tenant Board orders: 2011 CanLII 82126 (ONLTB) and 2012 CanLII 59945 (ONLTB)).

[69] As a result, the Tenant's claim for bad faith compensation is denied.

Conclusion

[70] The Landlords must pay the Tenant double the security deposit plus interest, in the amount of \$2,019.89, by April 11, 2024.

[71] The Tenant's claim against the Landlords for bad faith compensation is denied.

[72] In the Application and at the hearing the Tenant did not seek a monetary award for a return of rent based upon an unlawful rent increase. The Tenant's evidence at the hearing raises an issue regarding whether the authorized rent that the Landlords can lawfully charge for the Unit is \$995.00 per month instead of \$1,050.00. However, it is beyond the scope of this decision to determine this additional matter.

[73] The Officer also notes that rent runs with the rental unit and not the tenant (section 47 of the *Act*). When a tenant moves out of a rental unit a landlord cannot automatically increase the rent for the unit and must instead comply with the rent increase rules in Part 3 of the *Act*.

IT IS THEREFORE ORDERED THAT

1. The Landlords must pay the Tenant double the security deposit plus interest, in the amount of \$2,019.89, by April 11, 2024.
2. The Tenant's claim against the Landlords for bad faith compensation is denied.

DATED at Charlottetown, Prince Edward Island, this 22nd day of March, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
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.