

Introduction

- [1] On March 14, 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 double their security deposit in the amount of **\$708.00**.
- [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 March 28, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing themselves. The Landlord had two representatives appear on their behalf (the "Representatives").

Issue to be Decided

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

Summary of the Evidence

- [5] On December 1, 2021, the Tenant and a previous landlord entered into a written month-to-month tenancy agreement for the Rental Unit. The Landlord purchased the Rental Unit in November 2023 and the tenancy agreement continued. Rent was \$721.00 due on the first day of the month. A security deposit of \$708.00 was required and paid. The Tenant vacated on January 31, 2024.

Tenant's Evidence and Submissions

- [6] The Tenant provided notice to the Landlord on January 12, 2024, that she would be vacating the rental unit on January 31, 2024. The Tenant testified the Landlord agreed they would not hold the Tenant to the required notice period. On February 21, 2024, the Tenant filed an application with the Rental Office as she had not received her security deposit back within 15 days.
- [7] On February 29, 2024, the Landlord sent an e-transfer of \$732.34 to the Tenant, which was her security deposit plus interest. The Tenant stated she then learned that she could be entitled to double her security deposit back as the Landlord did not return the security deposit within 15 days. She stated she filed the Application for double the security deposit on March 14, 2024. The Tenant testified that she did not receive any application from the Landlord to retain the security deposit.

Landlord's Evidence and Submissions

- [8] The Representatives testified that the Tenant provided insufficient notice to end the tenancy agreement, but they gave her a break and did not hold her to the required notice period. The Representatives stated the Rental Unit was clean but they were busy and forgot to return the security deposit. After the Representatives received the first application from the Tenant, they returned the security deposit and interest right away. The Representatives stated they do not agree that they should have to return double the security deposit as they were only late by a few days.

Analysis

Is the Tenant entitled to a return of double the security deposit?

[9] 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 Tenant initiated the Application and bears the onus of proving their claim on a balance of probabilities. The courts have interpreted this standard to mean that a decision-maker must be satisfied there is sufficiently clear and convincing evidence to support the claim.

[10] 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.*

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, made comments as it relates to section 40 of the *Act*:

“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 the tenancy ended on January 31, 2024, as both parties testified this was the agreement they had. The Landlord had until February 15, 2024, 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*. Further, the evidence and the testimony provided does not reveal a set of facts that would exempt the Landlord under clauses 40(2) or (3).

- [13] The Officer finds the Landlord's excuse of being too busy as to why they were late in returning the security deposit is insufficient and not a legitimate exception under the *Act*. 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 Tenant is entitled to a return of double the security deposit. The Application is allowed.

Conclusion

- [14] The Application is allowed.
- [15] The Landlord shall pay the Tenant \$708.00 by April 30, 2024.
- [16] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$708.00 by April 30, 2024.

DATED at Charlottetown, Prince Edward Island, this 9th day of April, 2024.

(sgd.) Mitchell King
Mitchell King
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.