

Introduction

- [1] On December 27, 2023, 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 \$1,300.00.
- [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 April 2, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenants appeared, representing themselves and the Landlords appeared, representing themselves.

Issue to be Decided

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

Summary of the Evidence

- [5] On October 1, 2023, the parties entered into an oral month-to-month tenancy agreement for the Rental Unit, which consisted of a room in a house. Rent was \$1,300.00 for October 2023 and \$1,100.00 for November 2023, due on the first day of the month. A security deposit of \$1,300.00 was required and paid. The Tenants vacated on November 30, 2023.

Tenants’ Evidence and Submissions

- [6] The Tenants testified they each paid \$650.00 of the security deposit, totaling \$1,300.00. They gave the Landlords notice on November 15, 2023, that they would be vacating on November 30, 2023. When they first moved in they were not told they had to provide at least one month’s notice prior to vacating. They stated they were not notified of this requirement until after they had moved out.

Landlords’ Evidence and Submissions

- [7] The Landlords stated the Tenants notified the Landlords on November 15, 2023, that they would be vacating on November 30, 2023. The Landlords told the Tenants they had to provide at least one month’s notice or the Tenants could try to find someone to sublet the Rental Unit, but the Tenants were not able to find anyone to sublet. The Landlords also tried to re-rent the room, but they were not able to secure another tenant until January 2024. The Landlords stated the Tenants did not provide at least one month’s notice before vacating so they kept the security deposit for rent owing for December 2023. Text messages between the parties were submitted into evidence.

Analysis

Are the Tenants entitled to a return of the security deposit?

- [8] 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.

[9] 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.*

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 monthly or other periodic tenancy

- (2). *A tenant may end a month-to-month or other periodic 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 the day that before the day that rent is payable under the tenancy agreement.*

[10] 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...”

- [11] The Landlords and the Tenants both agreed that the Tenants provided notice on November 15, 2023, that they would be vacating on November 30, 2023. The Landlords stated they attempted to mitigate their losses by offering to allow the Tenants to sublet, however the Tenants did not sublet the Rental Unit. The Landlords stated they tried to find another tenant for the Rental Unit but they were not able to secure another tenant until January 2024.
- [12] The *Act* states that tenant is required to provide a landlord with at least one months' notice and be at least a day before rent is payable. Based on these set of facts, the Officer finds the end of the tenancy would have been December 31, 2023.
- [13] The Landlords therefore had until January 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 Landlords 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 Landlords under clauses 40(2) or (3).
- [14] The Landlords stated they retained the security deposit for one month's rent owing, as the Tenants failed to provide proper notice before vacating. However, the exemptions under clauses 40(2) and (3) do not list failure to provide proper notice and/or rent owing as reasons a landlord may retain a security deposit without applying to the Director. Also, the Landlords did not apply for rent owing or additional compensation.
- [15] Therefore, the Officer concludes that the Landlords did not comply with clause 40(1) of the *Act*, and are 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 Tenants are also entitled to a return of double the security deposit on the principal amount.

Conclusion

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

Item	Amount
Security Deposit	\$1,300.00
Interest (Oct. 1/23 – Apr. 12/24)	\$16.42
Security Deposit (Double Awarded)	\$1,300.00
Total Compensation Awarded to Tenants	\$2,616.42

- [17] Pursuant to clause 14(9) of the *Act*, the interest accrued is calculated to the date this Order is issued.

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.

- [18] The Landlords shall pay the Tenants \$2,616.42 by May 15, 2024.
- [19] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

A. The Landlords shall pay the Tenants \$2,616.42 by May 15, 2024.

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