

## Introduction

- [1] On February 22, 2024 the Tenant filed a *Tenant Application to Determine Dispute (Form 2(A))* dated February 21, 2024 (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks a return of the Tenant's security deposit, due to a contravention of the *Act* by the Landlord in accordance to clause 59 of the *Residential Tenancy Act* (the "*Act*"). The Application also seeks a finding for a return of rent in the amount of \$836.00.
- [2] The Tenant is seeking the return of her security deposit in the amount of \$400.00, plus interest. Further, the Tenant seeks compensation in the amount of double the security deposit, and a finding for a return of rent for December 2023.
- [3] All documents (including the Application, the *Notice of Hearing* and the *Evidence Package*) were properly served to the parties in accordance with clause 100(1) of the *Act*.
- [4] On April 2, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Tenant and a representative of the Landlord (the "Representative") participated at the hearing.

## Issues to be Decided

- i. Is the Tenant entitled to a return of the security deposit and double the security deposit amount?
- ii. Is the Tenant entitled to a return of December 2023 rent?

## Summary of the Evidence

- [5] The Rental Unit is a one-bedroom, one-bathroom apartment located in a six-unit building (the "Residential Property").
- [6] On November 1, 2020 the Tenant and the former landlord entered into an oral, month-to-month tenancy agreement. Rent was \$836.00 payable on the first day of the month. A security deposit of \$400.00 was paid to the former landlord on November 1, 2020. On December 1, 2023 the Landlord purchased the Residential Property, and the tenancy continued.
- [7] Part of the *Evidence Package* includes Rental Office Order LD23-611 dated December 21, 2023 included by the Director of Residential Tenancy (the "Director Exhibit").

## Tenant's Evidence and Submissions

- [8] The Tenant submitted into evidence a brief written submission, and a copy of the Island Regulatory and Appeals Commission (the "Commission") Order LR24-04.
- [9] The Tenant testified that she vacated the Rental Unit on December 1, 2023, and the subtenant vacated the Rental Unit on December 3, 2023 because the Landlord changed the locks. The Tenant testified that she was frustrated with the process because she attempted to contact the Rental Office seven times, but did not receive a call back about her question(s) regarding the eviction process.
- [10] The Tenant submitted that the Landlord has not complied with the *Act*. The Tenant submitted that the Landlord is required to file an application with the Rental Office to keep the security deposit. The Tenant submitted that the Landlord has not filed an application, and she did not receive any application from the Landlord. The Tenant argued she is entitled to double the security deposit.

- [11] The Tenant testified that she paid December 2023 rent in full. The Tenant submitted that she did not live in the Rental Unit for the month of December 2023. The Tenant argued she is entitled to a return of rent for December 2023 because she was “illegally evicted”, and the Landlord changed the locks on December 3, 2023, despite the Commission ordering the effective end date to be December 28, 2023.
- [12] The Tenant disputed parts of the Landlord’s testimony (see below), regarding the subtenant vacating and being offered a set of the new keys. The Tenant disputed the Landlord’s argument of following the law.

### **Landlord’s Evidence and Submissions**

- [13] The Landlord did not submit any documents into evidence, and did not submit any written submissions.
- [14] The Landlord testified that on February 14, 2024 he e-mailed the Tenant the list of damages to the Rental Unit, and notified the Tenant his intention to retain the security deposit. The Landlord testified that his interpretation of the *Act* was that he only needed to give notice to the Tenant of his intention to retain the security deposit.
- [15] The Landlord admitted that he did not file an application with the Rental Office. The Landlord testified that he believed he was following the proper process and that much of the Tenant’s testimony was already dealt with in previous Rental Office and Commission decisions. The Landlord argued that the subtenant vacated voluntarily before the December 28, 2023 vacate date. The Landlord testified that he did change the locks to the Rental Unit early in December 2023; however, on December 4, 2023 he texted the Tenant that she could have a set of the new keys.

### **Analysis**

- [16] 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*. Further, the Application seeks a return of rent. The relevant provisions are 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.

**Issue i: Is the Tenant entitled to a return of the security deposit and double the security deposit amount?**

- [17] The Commission in Order LR23-69, paragraph 15. made the following comment as it relates to clause 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...”

**The end of the tenancy**

- [18] The Officer finds that the tenancy ended by order of the Commission (see LR24-04), upholding the Rental Office’s Order LD23-611 (Director Exhibit) on December 28, 2023. The Officer notes that there were factual disputes between the parties regarding when the subtenant vacated the Rental Unit, and whether or not the Tenant was provided a set of keys after the changing of locks. The Officer notes despite the oral testimony from the parties, no corroborating evidence was submitted to assist the Officer in making such findings of fact. However, the Officer finds that these disputed facts are not of assistance in the Officer’s clause 40 analysis.

**The security deposit**

- [19] The Officer notes that the Landlord argued that he interpreted clause 40(1) to only require a landlord to give notice of his intentions to keep the security deposit. The Landlord argued on February 14, 2024 he e-mailed the Tenant such notice.
- [20] The Officer notes that the alleged February 14, 2024 e-mail was not submitted into evidence. Nevertheless, the Officer finds that clause 40(1) of the *Act* is clear, and provides the Landlord with two options (with few exceptions). The Landlord must either return the full amount of the security deposit and interest to the Tenant, or file an application (Form 2(B)) with the Rental Office within 15-days from the end of the tenancy. Clause 40(1) does not instruct the Landlord to provide notice to the Tenant. To the contrary, the Landlord is required to file an application first with the Rental Office, and then serve the application to the Tenant within five days of filing the application with the Rental Office.
- [21] The Officer finds that the Landlord admitted to not filing the application (Form 2(B)) with the Rental Office at any point after the tenancy. The evidence establishes that the tenancy ended December 28, 2023, which means the Landlord had until January 12, 2024 to either file an application with the Rental Office or return the full amount of the security deposit and interest to the Tenant. The Officer is satisfied on the evidence that the Landlord exercised neither option required by clause 40(1) of the *Act*.

- [22] Further, the documentary evidence and the oral testimony provided does not reveal a set of facts and/or circumstances that would exempt the Landlord under clauses 40(2) or (3). The Officer finds that despite the alleged notice provided by the Landlord to the Tenant on February 14, 2024 this does not shield the Landlord from the *rigours of section 40*.
- [23] Therefore, the Officer concludes that the Landlord did not comply with clause 40(1) of the *Act* and is not exempted under clauses (2) or (3). The Officer finds 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 Tenant is entitled to a return of the security deposit, including double the balance of the security deposit. This claim is allowed.

**Issue ii: Is the Tenant entitled to a return of December 2023 rent?**

- [24] The Tenant is seeking a return of December 2023 rent in the amount of \$836.00. The Tenant submitted that she paid December 2023 rent, but vacated on December 1, 2023 and the subtenant vacated on December 3, 2023. The Tenant argued she was illegally evicted.
- [25] The Landlord disputed the Tenant's submissions and argued that the Commission and the Rental Office have already made findings regarding the eviction.
- [26] The Officer finds that the Tenant paid December 2023 rent in full, and that the tenancy ended December 28, 2023. Therefore, the Tenant is entitled to a return of \$80.90 (3 days divided by 31 days in December multiplied by the rent \$836.00). This claim is allowed in part.

**Conclusion**

- [27] The Application is allowed, in part. The Tenant's compensation is calculated as follows:

Item	Amount
Security Deposit	\$400.00
Interest (11/01/20 – 04/12/24)	\$14.20
Security Deposit (Double Awarded)	\$400.00
Rent Returned (December 29-31, 2023)	\$80.90
Total Compensation Awarded to Tenant	\$895.10

- [28] In accordance 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.*

- [29] The interest accrued is calculated to the date this Order is issued.

- [30] **This Order will be served to the parties by e-mail.**

**IT IS THEREFORE ORDERED THAT**

A. The Landlord shall pay the Tenant \$895.10 on or before May 3, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 12th day of April, 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.