

Introduction

- [1] On February 21, 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] Attached to the Application was a copy of a *Form 8: Notice of Intention to Retain Security Deposit* (the "Form 8"), which was addressed to the Tenant and signed by the Landlord on February 10, 2024. The Form 8 stated the Landlord was intending to retain \$500.00 of the \$2,000.00 security deposit and that the Tenant had vacated on January 31, 2024.
- [3] The Tenant is seeking the return of the security deposit in the amount of **\$500.00**.
- [4] 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*.
- [5] On April 4, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant participated, representing themselves, however the Landlord did not call into the hearing. The Officer called the Landlord and the Landlord stated she was unable to participate in the hearing at that time. The Landlord did not request an adjournment and stated the evidence she had submitted was sufficient for the Officer to consider and she did not wish to participate in the hearing. The hearing proceeded without the Landlord.

Issue to be Decided

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

Summary of the Evidence

- [6] On November 20, 2022, the parties entered into a written fixed-term tenancy agreement for the Rental Unit, which converted to a month-to-month tenancy agreement. Rent was \$2,000.00 due on the first day of the month. A security deposit of \$2,000.00 was required and paid. The Tenant vacated on January 31, 2024.

Tenant's Evidence and Submissions

- [7] The Tenant stated the Landlord returned \$1,500.00 of the security deposit and he is seeking the remaining \$500.00 to be returned as well. He stated the Landlord served the Tenant with a Form 8 on February 10, 2024, stating that she would be seeking to retain \$500.00 of the security deposit. The Tenant submitted a copy of the Form 8 as well as copies of messages between the parties into evidence.
- [8] The Tenant stated the Landlord's submitted evidence states that he did not clean the windows or parts of the Rental Unit when he vacated. He admitted to not cleaning the windows but stated the windows were not clean when he moved in. He stated he cleaned the Rental Unit when he vacated but he did not move the large appliances to clean around those areas.
- [9] The Tenant stated he and the Landlord performed a move out inspection prior to the Tenant having all of his items removed. He stated the Landlord told him not to worry about the scratches on the walls as she was going to paint anyway. He stated the Landlord's evidence states he did not dust the top of the ceiling fan or in the heaters and he does not feel these are reasonable requirements.

- [10] The Tenant stated he should not have to pay for painting, as a landlord is required to paint when a tenant moves out. He stated he is not sure what damages the Landlord is referring to regarding a damaged bedroom door and window. He stated the Landlord did not provide any evidence regarding the lawn damage noted in her written submission. He stated he took a video of the Rental Unit before vacating and he would submit it to the Officer after the hearing.

Landlord's Evidence and Submissions

- [11] The Landlord did not participate in the hearing however she did submit 26 pages of evidence, which included a written submission, photographs of the Rental Unit after the Tenant vacated, messages between the parties, and a receipt from Kent for painting materials.
- [12] In the Landlord's written submission, she stated the Rental Unit was only rented to the Tenant for 13 months and had been newly drywalled before the Tenant moved in. She stated she was required to repaint some walls and trim from damages caused by the Tenant's animals. She stated it cost \$282.00 to hire a painter and \$211.47 for paint. She stated there was damage to a bedroom door and windows as well as damage to the lawn caused by the Tenant's moving truck. The Landlord submitted that the Rental Unit required cleaning after the Tenant vacated and the cost of cleaning was \$30.00 per hour x 36 hours, totaling \$1,080.00.

Post Hearing Evidence

- [13] On April 9, 2024, the Tenant submitted a video to the Rental Office which was 1 minute and 52 seconds in length. The Tenant stated during the hearing that the video depicts a walkthrough of the Rental Unit before he vacated. On April 9, 2024, the video was provided to the Landlord by email and she was requested to reply with any additional submissions regarding the video by April 12, 2024, at 4:00 pm. The Landlord did not provide any additional submissions.

Analysis

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

- [14] 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. 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.*

[15] 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..."

[16] The Officer finds the tenancy ended on January 31, 2024, based on the testimony of the Tenant and the January 31, 2024, vacate date noted on the Form 8. The messages between the parties establish \$1,500.00 of the security deposit was returned on February 10, 2024, the same day the Form 8 was served.

[17] The Landlord then had until February 15, 2024, to either return the rest of the security deposit and interest or file an application (Form 2(B)) with the Rental Office to retain the rest of the security deposit. After filing the 2(B), the Landlord was also required to serve a copy to the Tenant within 5 days. 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).

[18] The Officer notes that the service of a Form 8 to a tenant was required when seeking to retain a security deposit pursuant to the *Rental of Residential Property Act* (the "Former Act"). However, the Former Act was repealed on April 8, 2023, when the current *Act* came into force. Pursuant to the current *Act*, a Form 8 is not the correct form for a landlord to use when seeking to retain a security deposit. As stated above, the correct form a landlord must file with the Rental Office is a Form 2(B) application, within 15 days of the end of the tenancy.

[19] 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 remainder of the security deposit held by the Landlord plus accrued interest.

Conclusion

[20] The Application is allowed. The Tenant's compensation is calculated as follows:

Item	Amount
Security Deposit	\$2,000.00
Interest (Nov. 20/22 – Feb. 10/24)	\$55.04
Returned – Feb. 10/24	(\$1,500.00)
Security Deposit and interest remaining	\$555.04
Interest (Feb. 11/24 – Apr. 15/24)	\$2.18
Security Deposit still held (Double Awarded)	\$500.00
Total Compensation Awarded to Tenant	\$1,057.22

[21] 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.

[22] The Landlord shall pay the Tenant \$1,057.22 by May 15, 2024.

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

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$1,057.22 by May 15, 2024.

DATED at Charlottetown, Prince Edward Island, this 15th 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.