

INTRODUCTION

- [1] On April 11, 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.
- [2] On May 2, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 9:00 a.m. on May 16, 2024.
- [3] On May 10, 2024 the Rental Office emailed the parties an evidence package (the "Evidence Package" or "EP").
- [4] On May 16, 2024 a representative of the Tenant (the "Tenant's Representative") and a representative of the Landlord (the "Landlord's Representative") participated in a teleconference hearing before the Residential Tenancy Officer (the "Officer") for determination of the Application. At the hearing the parties confirmed receipt of the Evidence Package.

ISSUE

- i. Must the Landlord pay double the security deposit to the Tenant?

SUMMARY OF THE EVIDENCE

- [5] The Unit is located in a 25-unit building accompanied by two cottages that the Landlord has owned for seven or eight years (the "Residential Property").
- [6] The Landlord and the Tenant entered into a tenancy agreement for the Unit that commenced on November 3, 2023. Rent in the amount of \$1,100.00 was due on the first of the month and a \$900.00 security deposit was paid.
- [7] On February 27, 2024 the Landlord's Representative served the Tenant with an *Eviction Notice* (Form 4(A)) effective March 17, 2024 (the "Notice").

Landlord's Evidence and Submissions

- [8] The Landlord's evidence is summarized as follows.
- [9] The Landlord's Representative stated that the tenancy agreement was month-to-month but it was also agreed that the Tenant would vacate the Unit by May 1, 2024. There is a typographical error in the security deposit receipt because the actual payment date was November 3, 2023, not October 3, 2023.
- [10] The Landlord's Representative blocked communications from the Tenant and the Tenant's Representative. The Landlord's Representative did not receive the March 3, 2024 message from the Tenant's Representative and later messages.
- [11] On March 20, 2024 the Landlord's Representative became aware that the Tenant had moved out of the Unit. The Landlord's Representative stated that on this date she took the five photographs of the Unit that were submitted into evidence.
- [12] The Landlord retained the security deposit because of cigarette burns on the floor of the Unit, a damaged bed frame, a damaged mattress and room painting due to cigarette smoke.
- [13] The Landlord did not file an application to retain the security deposit with the Rental Office because the Landlord is unfamiliar with the process for retaining security deposits. The Landlord did not complete a written move-in or move-out condition inspection report with the Tenant.

Tenant's Evidence and Submissions

- [14] The Tenant's evidence is summarized as follows.
- [15] The Tenant's Representative helped the Tenant move in and out of the Unit and visited the Unit almost daily, except for a period of two weeks where the Tenant's Representative was sick. The Tenant's Representative cleaned the Unit.
- [16] On the move-in date the Tenant's Representative found a former occupant's cigarette butts under the bed in the Unit. The Tenant's Representative submitted into evidence photographs showing pre-existing damage to the Unit.
- [17] Due to the Notice, the Tenant moved out of the Unit on March 3, 2024. On this date the Tenant's Representative text messaged the Landlord's Representative to advise of the move out.
- [18] The Tenant's Representative disputes that the Tenant damaged the Unit except that the Tenant did smoke in the Unit. The Tenant's Representative disputes that the Landlord's Representative's photographs (EP 20 to 24) show the Unit.
- [19] On March 15, 2024 the Tenant's Representative messaged the Landlord's Representative stating as follows:
- "I haven't received my form 8 yet... I know [the Tenant] won't be getting it all back due to smoking in unit but that's not worth 900. I'm willing to pay \$200. I want to work with you on this but I have no problem going to rental board and having them settle it. You should be aware there is a time limit on this as per the regulations."*
- [20] The Tenant's Representative stated that she sent this message because she believed \$200.00 was a fair amount to address the damage caused by the Tenant smoking in the Unit.
- [21] The Tenant's Representative stated that her communications were not blocked by the Landlord's Representative until mid-April of 2024.

ANALYSIS

- [22] For the reasons below, the Officer finds that the Landlord must pay the Tenant double the \$700.00 security deposit balance, plus interest on the security deposit.
- [23] The current law regarding the retention or return of a security deposit is stated in section 40 of the *Residential Tenancy Act* (the "Act"), which has been in force since April 8, 2023.
- [24] In Order LR23-76¹ the Island Regulatory and Appeals Commission (the "Commission") determined a matter where a landlord has served a Notice of Intention to Retain Security Deposit (Form 8), which is a form prescribed by the repealed *Rental of Residential Property Act*, RSPEI 1988, R-13.1. The Commission stated as follows:

"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))."

¹ Website link: <https://irac.pe.ca/wp-content/uploads/Order-LR23-76.pdf>

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.*

15. *In the present appeal, the Landlord served the Tenants with a Form 8, prescribed under the former Rental of Residential Property Act, ten days after the end of the tenancy. However, he did not make application to the Director within 15 days, or at all, as required by the new Act. Instead, the Tenants had to bring the Application that is the subject of this appeal in order to settle the issue of the security deposit. It was the Landlord's failure to follow the provisions of the new RTA and file an application with the Director, not the mere use of the wrong form, which triggered the consequences of subsection 40(4) of the Act.*

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..."*

- [25] It appears to the Officer that the March 15, 2024 message from the Tenant's Representative to the Landlord's Representative expressed the Tenant's agreement for the Landlord to retain \$200.00 from the security deposit for a liability of the Tenant, namely damage caused by smoking. Therefore, the Landlord was entitled to retain \$200.00 of the \$900.00 in security deposit funds based upon clause 40(3)(a) of the Act, which states:

A landlord may retain an amount from a security deposit if

(a) at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant;

- [26] Based upon the evidence presented, the Landlord has not proven that the Tenant caused any damage except for the \$200.00. The Landlord did not complete written move-in and move-out inspection reports which are required by sections 18 and 38 of the Act. The Tenant's Representative has provided evidence of pre-existing damage and has disputed the other damage alleged by the Landlord.

[27] In this case the Landlord did not file an application within the 15-day deadline in section 40 of the *Act*. As a result, the Landlord must pay the Tenant double the security deposit balance, as calculated below:

Item	Amount
Security Deposit Balance	\$700.00
Interest (3 NOV 2023 to 15 MAR 2024)	\$7.79
Interest (16 MAR 2024 to 21 MAY 2024)	\$2.84
Security Deposit Balance (Double Awarded)	\$700.00
Total	\$1,410.63

Conclusion

[28] The Application is valid.

[29] After making a \$200.00 deduction from the security deposit as of March 15, 2024, the Landlord must pay the Tenant double the \$700.00 security deposit balance plus interest, in the total amount of \$1,410.63, by the timeline below.

[30] The Landlord may pay these funds by e-transfer to the Tenant's Representative.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$1,410.63 by June 10, 2024.

DATED at Charlottetown, Prince Edward Island, this 21st day of May, 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.