

## Introduction

- [1] On March 11, 2024, 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 the *Residential Tenancy Act* (the “Act”).
- [2] On May 7, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). One of the Tenants participated, representing all three Tenants, and one of the Landlords participated, representing both Landlords.

## Issue to be Decided

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

## Summary of the Evidence

- [3] On May 1, 2023, the parties entered into a written fixed-term tenancy agreement for the Rental Unit. Rent was \$2,500.00 due on the first day of the month. A security deposit of \$1,000.00 was required and paid. The Tenants vacated on September 30, 2023, upon mutual agreement by the parties.

### Tenants’ Evidence and Submissions

- [4] The Tenants submitted several documents into evidence including a written submission, messages between the parties, and copies of the tenancy agreements. The Tenant stated the Tenants vacated the Rental Unit on September 30, 2023, and did not hear anything from the Landlords about the security deposit. He stated on March 8, 2024, the Tenant contacted the Landlords and was advised the Landlords would be retaining the security deposit. The Tenant stated the Landlords indicated the Rental Unit required cleaning and repairs after they vacated. He stated the Rental Unit was not damaged and was clean when they vacated. He stated if the Landlords told them the Rental Unit was unclean after they vacated the Tenants would have returned to clean what was required.

### Landlords’ Evidence and Submissions

- [5] The Landlords submitted several documents into evidence including a written submission, messages between the parties, cleaning and repair invoices and estimates, a copy of a tenancy agreement, and photographs of the Rental Unit. The Landlord stated it cost \$1,649.35 to clean and repair the Rental Unit after the Tenants vacated. She stated the tub was unclean and damaged, a chair was damaged, a grill pan and pillows were damaged, and the Rental Unit required several hours of cleaning before the next occupants could move in. She stated the chair has not yet been repaired but an estimate for the repair was submitted into evidence.
- [6] The Landlord submitted a breakdown of the expenses into evidence and it is summarized as follows:

<b>Item</b>	<b>Cost</b>
Cleaning	\$785.60
Steam Cleaning	\$200.00
Tub Cleaning	\$100.00
Upholstery for Damaged Chair	\$350.75
Repairs to Bathroom	\$138.00
Replace Grill Pan	\$15.00
Replace Decorative Pillows	\$60.00
<b>Total</b>	<b>\$1,649.35</b>

## Analysis

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

[7] The Application is made in accordance with clause 75 of the *Act* and is seeking a finding that the Landlords breached clause 40(1) of the *Act*. The Tenants initiated the Application and bear the onus of proving their claim on a balance of probabilities. 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.*

[8] 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..."*

[9] The Officer finds the tenancy ended on September 30, 2023, by mutual agreement, based on the documentary evidence and testimony of the parties. The Landlords then had until October 15, 2023, to either return the security deposit and interest or file an application (Form 2(B)) 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).

[10] The Officer finds 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*, requiring the Landlord to pay double the security deposit. As a result, the Officer finds the Tenants are entitled to a return of the security deposit plus interest and they are also entitled to a return of double the security deposit on the principal amount.

## Conclusion

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

Item	Amount
Security Deposit	\$1,000.00
Interest (May 1/23 – May 21/24)	\$25.51
Security Deposit (Double Awarded)	\$1,000.00
<b>Total Compensation Awarded to Tenants</b>	<b>\$2,025.51</b>

[12] The Landlords shall pay the Tenants \$2,025.51 by June 15, 2024.

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

## IT IS THEREFORE ORDERED THAT

A. The Landlords shall pay the Tenants \$2,025.51 by June 15, 2024.

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