

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On March 14, 2024 the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed to claim against the security deposit.
- [3] On March 14, 2024 the Landlord electronically served the Application to the Tenants.
- [4] On April 22, 2024 the Rental Office mailed and e-mailed the parties a notice of a teleconference hearing (the “Notice of Hearing”), along with a copy of the Application.
- [5] On May 1, 2024 the *Evidence Package* (the “EP”) was e-mailed to the parties. The EP contains 55-pages of documents submitted by the parties.
- [6] On May 7, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord and the Tenant participated.

Issue to be Decided

- i. Is the Landlord entitled to retain the security deposit?

Summary of the Evidence

- [7] The Rental Unit is situated in a triplex (the “Residential Property”).
- [8] The parties entered into a written, fixed-term tenancy agreement for the period of October 1, 2023 to October 1, 2024. Rent was \$2,000.00 due on the first day of the month. However, the rent was reduced to \$1,800.00, and then reduced again to \$1,000.00. A security deposit of \$1,000.00 was paid at the end of September 2023.
- [9] The Tenants vacated the Rental Unit on March 1, 2024.

Landlord’s Evidence and Submissions

- [10] The Landlord submitted 2-pages of documents into evidence including: a brief written submission and a copy of a text message from the Tenants.
- [11] The Landlord stated that in October 2023 the Tenants requested a reduction in rent due to financial hardship. The Landlord stated that he agreed to reduce the rent to \$1,800.00. The Landlord stated that in December 2023 the Tenants discussed looking for a new place to live due to affordability. The Landlord stated that he wanted to help the Tenants, so he agreed to reduce the rent to \$1,000.00 until April 1, 2024.
- [12] The Landlord stated that in February 2024 he reached out to the Tenants to remind them that the rent would increase to \$1,400.00 starting April 1, 2024 until the end of the tenancy agreement. The Landlord stated that the Tenants responded on February 13, 2024 that they were vacating the Rental Unit on March 1, 2024. The Landlord stated that he is seeking to retain the security deposit to cover the \$1,000.00 rent which was due for March 2024.
- [13] The Landlord stated that after the reduction in the rent, he did not believe the Tenants were vacating. The Landlord stated that he only became aware two weeks before they vacated. The Landlord stated that he has advertised the Rental Unit, and other than painting the Rental Unit, no other issues were found.

Tenants' Evidence and Submissions

- [14] The Tenants submitted 45-pages of documents into evidence including: a written submission, a copy of the Application, bank statements, an e-mail from the Landlord, and text messages.
- [15] The Tenant stated that his intentions were always to find new living accommodations that were more affordable. On December 2, 2023 the Tenant reached out to the Landlord to discuss the fixed-term agreement. The Tenant stated that due to health issues he was unable to work full-time, which caused financial hardship. The Tenant stated that he informed the Landlord of his intentions to relocate, however, the Landlord offered to reduce the rent to \$1,000.00 until April 2024. The Tenant stated that he accepted this arrangement.
- [16] The Tenant stated that at the end of January 2024 the Landlord approached him about having to increase the rent. The Tenant stated that he informed the Landlord at this point he would rather vacate on March 1, 2024. The Tenant stated that on February 13, 2024, the Landlord sent him a text message about the rent, but the Tenant stated that he responded to the Landlord with his reminder that he was vacating on March 1, 2024.
- [17] The Tenant stated that he requested the return of his security deposit. However, the Landlord did not return it. The Tenant stated that if he would have known the Landlord was keeping the security deposit for rent, he would have moved out in December 2023.

Analysis

- [18] The Application is made in accordance with clause 75 of the Act and seeks to make a claim against the security deposit, pursuant to clause 40(1) of the Act. 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.*

55. Notice for fixed-term tenancy

- (3) *A tenant may end a fixed-term 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 not earlier than the date specified in the tenancy agreement as the end of the tenancy; and*
- (c) *is the day before the day that rent is payable under the tenancy agreement.*

42. Abandonment of rental unit by tenant

...

Interpretation

- (2) *A tenant is considered to have abandoned a rental unit only where*
- (a) *the tenant has vacated the rental unit;*
- (b) *the tenancy agreement is not terminated in accordance with this Act or the tenancy agreement; and*
- (c) *rent is overdue.*

- [19] The Landlord initiated the Application under the Act. The Landlord bears the onus of proving his claim on a balance of probabilities. This means that a decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim and the value of the alleged damage.

March 2024 rental arrears in the amount of \$1,000.00

- [20] The Officer finds it is undisputed that the parties entered into a fixed-term tenancy agreement for the period of October 1, 2023 to October 1, 2024. Further, it is undisputed that the Tenants vacated the Rental Unit on March 1, 2024.
- [21] The Tenants did not provide notice to terminate the tenancy agreement in accordance with clause 55(3) of the Act. Even if the Tenants did provide proper notice it would only have terminated the tenancy as of October 1, 2024. The Tenants stated that they provided notice in December 2023 and would have vacated at that time. The Officer finds this still would not have been in compliance with the requirements of clause 55(3).
- [22] There is no evidence to suggest the Landlord agreed to end the tenancy early. To the contrary, the Landlord reduced the rent for the Tenants in hopes to continue the tenancy. The Officer further finds that the testimony from the Landlord establishes that he attempted to mitigate his losses by advertising the Rental Unit as required by clause 46 of the Act.
- [23] The Officer finds that the Tenants abandoned the Rental Unit on March 1, 2024. Therefore, the Officer finds that the Landlord is entitled to retain the security deposit in the total amount of \$1,000.00 for March 2024 rental arrears. The Application is allowed.

Conclusion

- [24] The Application is allowed. The Landlord is entitled to retain the security deposit.
- [25] The accrued interest on the \$1,000.00 security deposit is \$15.16, which must be returned to the Tenants.
- [26] The Officer's calculations are as followed:

Item	Amount
Arrears owed for rent	\$1,000.00
Less security deposit	(\$1,000.00)
Interest on security deposit	\$15.16.
Amount returned to the Tenants	\$15.16

IT IS THEREFORE ORDERED THAT

- I. The Landlord shall retain \$1,000.00 from the security deposit.
- II. The Landlord shall return \$15.16 to the Tenants by June 12, 2024.

DATED at Charlottetown, Prince Edward Island, this 22nd day of May, 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 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.