

INTRODUCTION

- [1] On February 22, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Tenant’s Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for double the security deposit, in the amount of \$5,400.00 plus interest.
- [2] On March 15, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for April 30, 2024, along with a copy of the Tenant’s Application.
- [3] On April 23, 2024 the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* (the “Landlord’s Application”) with the Rental Office seeking outstanding rent and compensation exceeding the security deposit, in the total amount of \$7,125.00.
- [4] In this decision the Tenant’s Application and the Landlord’s Application are collectively referred to as the “Applications.”
- [5] On April 25, 2024 the Rental Office mailed and emailed the parties notice of a rescheduled teleconference hearing scheduled for May 2, 2024, with a new evidence deadline. The Rental Office also sent the parties copies of the Applications. The Rental Office later provided the parties with an additional notice of hearing with the correct hearing time.
- [6] On April 30, 2024 the Rental Office emailed the parties a 98-page evidence package (the “Evidence Package” or “EP”).
- [7] On May 2, 2024 the Tenant, the Tenant’s witness, the Tenant’s interpreter, the articling clerk for the Landlord (the “Clerk”), the Landlord’s representative (the “Representative”), and the Landlord’s two witnesses participated in a teleconference hearing before the Residential Tenancy Officer (the “Officer”) for determination of the Applications. The parties confirmed receipt of the Evidence Package.
- [8] After the hearing the parties were permitted to submit specific documents that had been referred to at the hearing. The Rental Office received these documents from the parties on May 2, 2024, which form part of the evidentiary record.

PRELIMINARY MATTER

- [9] In the Landlord’s Application the Representative omitted a claim for retention of the security deposit. The Landlord’s position is that the tenancy ended on April 30, 2024. As of the May 2, 2024 hearing date the Landlord was within 15 days of April 30, 2024. The Landlord sought an amendment to the Landlord’s Application to add a claim for retention of the security deposit. The Tenant opposed an amendment.
- [10] The Officer advised the parties that, if an amendment was refused, then the Landlord may file an additional application after the hearing seeking to retain the security deposit. This would lead to an additional proceeding covering closely related matters.
- [11] As a result, the Officer ruled that the Landlord’s Application would be amended, effective May 2, 2024, to include a claim for retention of the security deposit (line (e) of the Landlord’s Application).

ISSUES

- i. Did the tenancy end on January 31, 2024 or April 30, 2024?
- ii. Must the Landlord pay the Tenant double the security deposit?
- iii. Has the Landlord established a valid claim to be offset against the Tenant’s claim?

SUMMARY OF THE EVIDENCE

- [12] The Unit is a four-bedroom, three-bathroom single family home that the Landlord has operated since December of 2018.
- [13] The Landlord and the Tenant entered into a written, fixed term tenancy agreement for the period of September 18, 2023 to April 30, 2024. Rent in the amount \$2,700.00 was due on the first day of the month and a \$2,700.00 security deposit was paid on July 31, 2023. The rent does not include the cost of electricity.

Landlord – Evidence**Representative**

- [14] The Representative's evidence is summarized as follows.
- [15] The Landlord and the Tenant did not complete a written move-in or move-out inspection report. The Representative stated that the Tenants did not have any problems with the Unit when they moved in.
- [16] The Representative submitted into evidence a December 29, 2023 email from the Tenant (EP49 to 51). The Representative stated that she received the email while on vacation outside of Canada. The email states in part:

"...The reason for this letter is to inform you that we have made the decision to leave the house you are currently renting from us, I give you 1 month's notice in advance. We will deliver your property on February 1, 2024. Also coordinate and consider the return date of the requested warranty month at the time..."

- [17] The Representative submitted into evidence two emails between the parties on December 29 and December 31, 2023 (EP52 & 53).
- [18] The Representative submitted into evidence a January 3, 2024 email to the Tenant (EP54), which states in part:

"Hello [Tenant],

I have received your rent for the month of January.

Please confirm that you will move out on January 31. Your deposit will be returned after we have done the move out inspection. Please note that I am very disappointed that this has happened, but I do not want to make a big deal out of it.

Please do not forget to clean the house carefully and return the house in the same condition as when you received it. Please confirm a date and time for your move-out inspection."

- [19] With regard to the January 3, 2024 email, the Representative provided the following evidence upon questioning from the Clerk:

Clerk: *"When you sent this email in on January 3 and I am showing her a copy of the January 3 email. Like I know that both sides submitted that so I don't think it should be that controversial. Did you intend this email to end the rental contract?"*

Representative: *"Yes."*

Clerk: *"You intended it to end the rental contract?"*

Representative: *"Ah, in the, so for this one. What does [inaudible] say again?"*

Clerk: *"Sorry [Officer], I just wanted to clarify one thing with my client. I apologize. Like there is also a little bit of a language barrier..."*

- [20] The Representative stated that the Tenant did not provide the confirmation requested in the January 3, 2024 email and therefore the Landlord was unable to advertise and find new tenants. The Representative testified: *"If they confirmed that means we don't have the hearing today."*
- [21] On January 21, 2024 the Representative messaged the Tenant (EP39) stating:
- "We have a three bedroom brand new house available immediately. The rent is 2500 per month for one year lease and you can renew every year. Please let me know if you want to rent this house,"*
- [22] Around January 27, 2024 the Representative attended the Unit and spoke with the Tenant's family members. The Representative was told that the Tenant was moving out on January 31, 2024. The Representative told the Tenant's family that the security deposit would be withheld if she was unable to re-rent the Unit.
- [23] After January 3, 2024, the first time the Representative directly told the Tenant that he would not get the security deposit back was February 1, 2024.
- [24] On February 1, 2024 the Tenant met with the Representative for five minutes at the Unit. The Representative told the Tenant that if he moves out then he will lose his deposit and have pay to the end of the lease because the Representative could not find someone to move in right away. The Tenant stated that he would come back the next day because he only had a short time to meet.
- [25] The photographs submitted into evidence by the Landlord are from around February 1, 2024. The Landlord submitted two photographs from the kitchen (EP90 and additional evidence).
- [26] On February 2, 2024 the Representative waited for the Tenant but he did not come to the Unit. The Representative and the Tenant did not have further discussions regarding another inspection. The Representative did not complete a move-out inspection report alone.
- [27] When the Tenant vacated the Unit was dirty and had a bad smell. The Representative spent two days in early February cleaning up the Unit.
- [28] The Representative submitted into evidence an invoice for the painting cost (EP55 and additional evidence).
- [29] On February 15, 2024 the Tenant returned a garage door remote for the Unit.
- [30] The Landlord advertised the Unit around February 8, 2024, when the painting was finished, through its website for booking directly. Bookings can also be made through Facebook, Kijiji, booking.com, AirBNB and Expedia.
- [31] The Landlord was unable to find people to rent the Unit in February and April of 2024, resulting in a loss of rental income totaling \$5,400.00. The Landlord was able to find short term renters in March 2023. The Landlord rented the Unit for three weeks at \$1,250.00 per week for a total income of \$3,750.00. Electricity was included in the weekly rental cost, which cost around \$520.00 to \$540.00 over a month. The Landlord also had additional cleaning and advertising costs for the Unit during this period.
- [32] The Landlord submitted into evidence a March 13, 2024 email to the Tenant requesting a mailing address for a cheque (EP57 and 58).

Landlord's First Witness ("LW1")

- [33] The evidence of LW1 is summarized as follows.
- [34] LW1 painted the whole Unit from February 2 to 7, 2024. LW1 had not previously been in the Unit.
- [35] LW1 stated that there was some damage behind the stove and a smell in the Unit. LW1 does a lot of painting jobs and he could not recall all the details of the Unit during the hearing.

Landlord's Second Witness ("LW2")

- [36] The evidence of LW2 is summarized as follows.
- [37] LW2 did a couple trips to the Unit fixing heaters. During the first trip in February 2024 the heater was locked out and could not be adjusted and on the second trip in April 2024 the heater had been set to econo-mode and needed to be reset.
- [38] The Unit was vacant when LW2 visited the Unit.

Landlord – Clerk's Submissions

- [39] The Clerk's submissions are summarized as follows.
- [40] The tenancy agreement did not end until April 30, 2024. The Landlord seeks \$5,400.00 for February and April 2024 rent. The Landlord also seeks \$1,725.00 for wall and painting costs.
- [41] With regard to the January 3, 2024 email from the Representative to the Tenant, the Representative did not intend to terminate the tenancy by agreement, as is permitted by subsection 51(3) of the *Residential Tenancy Act* (the "Act").
- [42] The Representative was recognizing that the Tenant would be moving out and was working out the timeline so she could fulfill her duty to mitigate her losses. The Landlord owns a number of rental properties and the Representative is aware of the duty to mitigate in section 46 of the *Act*. There was not a meeting of the minds regarding the end of the tenancy.
- [43] In Order LD23-590 a Residential Tenancy Officer determined a rent owing claim in similar circumstances. This decision addressed a fixed term tenancy where the tenant vacated the rental unit before the end of the term. At paragraph [23] the following is stated:

"The Officer finds that the Landlord and Tenant did not have a written agreement to end the tenancy agreement on October 4, 2023, and that the Tenant did not provide proper notice to end the tenancy pursuant to subsection 53.(3) of the Act. The Officer finds that the Representative inquiring with the Tenant as to when she would move does not constitute a written agreement to end the tenancy agreement pursuant to subsection 51.(3) of the Act."

Tenant's Evidence and Submissions

- [44] The Tenant's evidence and submissions are summarized as follows.
- [45] When the Tenant moved into the Unit there was a smell and things that needed to be cleaned up because the Unit had been rented as an AirBNB. The Unit was not freshly painted when the Tenant moved in.
- [46] The Tenant's position is that the tenancy agreement ended on January 31, 2024.

- [47] On December 29, 2023 the Tenant communicated to the Representative that he wanted to move out at the end of January 2024.
- [48] On January 3, 2024 the Representative emailed the Tenant (EP8) agreeing that the tenancy would end January 31, 2024. From this message the Tenant understood that the tenancy agreement would be over at the end of January of 2024.
- [49] On January 21, 2024 the Representative provided an advertisement to the Tenant for another rental unit.
- [50] On January 24, 2024 the Tenant emailed the Representative stating that the Representative had already accepted the notice of termination of the contract. The Tenant reiterated the delivery of the Unit on February 1, 2024.
- [51] On January 31, 2024 the Tenant moved out of the Unit.
- [52] On February 1, 2024 the Tenant and the Representative met to return the key to the Unit. The Representative and the Tenant walked through the Unit together to inspect things. The Representative and the Tenant did not complete a written move-in or move-out inspection report.
- [53] The Tenant was unaware of the Landlord's painting claim until the hearing date. The Tenant denies damaging the Unit's walls and did not recognize the damage in the Landlord's photographs (EP90). The Tenant submits that any damage was normal wear and tear.
- [54] The Tenant submits that the short-term rental of the Unit by the Landlord is inconsistent with the tenancy continuing to be in existence.

ANALYSIS

i. Did the tenancy end on January 31, 2024 or April 30, 2024?

- [55] For the reasons below, the Officer finds that the tenancy ended on January 31, 2024. Therefore, the Landlord's claims for February and April 2024 rent are denied.
- [56] The Landlord and Tenant entered into a fixed term tenancy agreement for the period of September 18, 2023 to April 30, 2024. Therefore, a valid notice of termination served by the Tenant would only terminate the tenancy as of April 30, 2024 (see subsection 55(3) of the Act).
- [57] It appears to the Officer that the December 29, 2023 email from the Tenant to the Representative sought to terminate the tenancy as of January 31, 2024 with the Landlord regaining possession as of February 1, 2024.
- [58] When the Representative received the December 29, 2023 email from the Tenant, the Landlord could have taken a firm position that the Tenant would be responsible for rent until the end of the fixed term (subject to the Landlord's duty to mitigate losses). The Landlord could have suggested that the Tenant find a subtenant for the remaining three months of the term. The Landlord could have asked the Tenant to find a replacement tenant so the tenancy agreement could be assigned.
- [59] Based upon the evidence presented, it appears to the Officer that the January 3, 2024 email by the Landlord to the Tenant was agreement that the tenancy would end as of January 31, 2024. The Officer makes this finding based upon the content of the email, the Landlord's text message to the Tenant on January 21, 2024, and the testimony of the parties.

- [60] In the January 3, 2024 email the Landlord communicated that, with regard to the Tenant's early termination of the tenancy agreement, she did not want *"to make a big deal out of it."* This indicates to the Officer that the Landlord would not be holding the Tenant responsible for rent for the three-month balance of the term.
- [61] Holding the Tenant responsible for a potential \$8,100.00 rent owing claim would be a big deal.
- [62] Further, the email states that the security deposit would be returned after a move out inspection, which also indicates agreement to end the tenancy.
- [63] On January 21, 2024 the Representative messaged the Landlord regarding a rental that was *"available immediately."* The delivery of this message is consistent with the Representative being aware that the Tenant would be moving out of the Unit shortly. This message is inconsistent with the Representative waiting on confirmation from the Tenant that he would in fact be moving out of the Unit.
- [64] The Tenant's evidence was that the January 3, 2024 email was agreement to end the tenancy.
- [65] The Representative evidence was also that the January 3, 2024 email was an agreement to end the tenancy. However, there was no valid agreement because the Tenant did not provide the confirmation requested in the email.
- [66] The Officer does not accept the Representative's submission that there was no valid agreement unless the Tenant provided confirmation that he would be moving out of the Unit. Based upon the contents of the December 29, 2023 email, it was already apparent that the Tenant would be moving out on January 31, 2024.
- [67] Further, if the Representative had wanted Tenant confirmation as a condition of a valid agreement, then the Representative needed to use mandatory language along with a deadline for confirmation. For instance, the Representative could have stated *"You must reply to me by [date] confirming that you will move out of the Unit by January 31, 2024 or there is no valid agreement to terminate the tenancy agreement."*
- [68] Instead, the Landlord used permissive language asking the Tenant to "please" provide confirmation.
- [69] The facts of this case appear to the Officer to be distinct from those in Order LD23-590.
- [70] For these reasons, the Officer finds that the tenancy ended on January 31, 2024.

ii. Must the Landlord pay the Tenant double the security deposit?

- [71] For the reasons below, the Officer finds that the Landlord must pay the Tenant double the \$2,700.00 security deposit, plus interest on the security deposit.
- [72] In Order LR23-76¹ the Island Regulatory and Appeals Commission (the "Commission") summarized the law regarding security deposits 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..."*

- [73] As the tenancy ended by agreement on January 31, 2024, the Landlord was required to file an application with the Rental Office for retention of the security deposit by February 15, 2024. The Landlord did not make claim against the security deposit until May 2, 2024, well past the filing deadline. As a result, the Officer finds that the Landlord must pay the Tenant double the security deposit plus interest on the original security deposit, in the total amount of \$5,454.37, as calculated below:

Item	Amount
Security Deposit Balance	\$2,700.00
Interest (31 JUL 2023 to 4 JUN 2024)	\$54.37
Security Deposit Balance (Double Awarded)	\$2,700.00
Total	\$5,454.37

iii. Has the Landlord established a valid claim to be offset against the Tenant's claim?

- [74] For the reasons below, the Officer finds that the Landlord's claims for painting and related expenses are denied.
- [75] The Landlord was required to complete written move-in and move-out inspection reports pursuant to sections 18 and 38 of the Act. However, the Landlord did not complete either report.
- [76] The Landlord did not submit to the Rental Office objective evidence (photographs, etc.) showing the condition of the Unit at the beginning of the tenancy. The Tenant has disputed causing any damage beyond normal wear and tear.

- [77] The Officer finds that the Landlord has not provided a sufficient evidentiary record to establish a baseline condition of the Unit from which the Officer can assess any damage to the Unit. As a result, the Landlord's offset claim against the Tenant for painting and related expenses is denied.

CONCLUSION

- [78] The Tenant's Application is allowed and the Landlord's Application is denied.
- [79] The tenancy agreement terminated on January 31, 2024.
- [80] The Landlord must pay the Tenant double the security deposit balance plus interest, in the total amount of \$5,454.37, by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$5,454.37 by June 24, 2024.

DATED at Charlottetown, Prince Edward Island, this 4th day of June, 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.