

INTRODUCTION

- [1] On May 10, 2024 the Tenant filed an amended *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 and a return of pro-rated rent for April of 2024.
- [2] On May 14, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for 9:00 a.m. on June 4, 2024.
- [3] On May 30, 2024 the Rental Office emailed the parties an evidence package.
- [4] On June 4, 2024 the Tenant participated in a teleconference hearing before the Residential Tenancy Officer (the “Officer”) for determination of the Application. The Rental Office telephoned the Landlord but there was no response. The Officer waited until 9:11 a.m. before proceeding with the hearing in the absence of the Landlord. The hearing concluded at 9:34 a.m.

ISSUES

- i. Must the Landlord pay double the security deposit to the Tenant?
- ii. Must the Landlord return pro-rated April 2024 rent to the Tenant?

SUMMARY OF THE EVIDENCE

- [5] The Tenant’s evidence is summarized as follows.
- [6] The Landlord and the Tenant entered into a written, fixed term tenancy agreement for the period of April 1, 2024 to April 1, 2025. Rent in the amount of \$550.00 was due on the first day of the month and a \$550.00 security deposit was paid on March 20, 2024.
- [7] On April 1, 2024 the Tenant paid the Landlord \$550.00 in rent for April of 2024. The Tenant was forced to move out of the Unit because the Landlord was in fact a sub landlord and he had sublet the Unit to the Tenant without consent. The Tenant vacated the Unit the morning of April 7, 2024.
- [8] The Tenant submitted into evidence a handwritten letter from the Landlord that the Tenant received on April 6, 2024. In the letter the Landlord had agreed to return the Tenant’s security deposit and “*rest rent*” by April 14, 2024. None of the funds were in fact returned.

ANALYSIS

- [9] For the reasons below, the Officer finds that the Landlord must pay the Tenant double the \$550.00 security deposit, plus interest on the security deposit. The Landlord must also pay the Tenant pro-rated April 2024 rent of \$440.00.
- [10] In Order LR23-76¹ the Island Regulatory and Appeals Commission (the “Commission”) discussed the law regarding the retention of security deposits, stating 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..."

[11] Based upon the evidence presented, on April 6, 2024 the Landlord agreed to return to the Tenant the security deposit and pro-rated April 2024 rent by April 14, 2024. The Landlord did not pay the Tenant the funds by the date promised or within the statutory 15-day deadline.

[12] As a result, the Landlord must pay the Tenant double the security deposit, interest on the security deposit, and pro-rated April 2024 rent as calculated below:

Item	Amount
Security Deposit	\$550.00
Interest (20 MAR 2024 to 5 JUN 2024)	\$2.60
Security Deposit (Double Awarded)	\$550.00
Pro-rated April 2024 Rent (24 of 30 days)	\$440.00
Total	\$1,542.60

CONCLUSION

[13] The Application is valid.

[14] The Landlord must pay the Tenant \$1,542.60 by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$1,542.60 by June 25, 2024.

DATED at Charlottetown, Prince Edward Island, this 5th 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.