

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On April 19, 2024 the Tenants filed the first *Tenant Application to Determine Dispute (Form 2(A))* (the “First Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for a return of pro-rated rent for April of 2024 and compensation for the Landlord not providing services included in the tenancy agreement. On April 19, 2024 the Tenants emailed the First Application to the Landlord.
- [3] On April 25, 2024 the Rental Office mailed and emailed the parties the first notice for a teleconference hearing.
- [4] On May 1, 2024 the Tenants filed the second *Tenant Application to Determine Dispute (Form 2(A))* (the “Second Application”) with the Rental Office seeking a monetary order for double the security deposit. On May 8, 2024 the Tenants emailed the Second Application to the Landlord.
- [5] On May 21, 2024 the Rental Office mailed and emailed the parties the second notice for a teleconference hearing.
- [6] On May 28, 2024 the Rental Office provided the parties access to the evidence package via Titan File. The evidence package (the “EP”) contains 21 pages of documentary evidence and 1 video submitted by the Tenants.
- [7] On May 29, 2024 the Rental Office sent the parties an email reminding them of the scheduled teleconference hearing, with the contact information for the teleconference enclosed.
- [8] On May 30, 2024 at 1:00 p.m. one of the Tenants participated in a teleconference hearing before the Residential Tenancy Officer (the “Officer”). The participating tenant advised the Officer that she was representing the two Tenants for the hearing. The Rental Office telephoned the Landlord but there was no response. The Officer waited until 1:10 p.m., before proceeding with the hearing in the absence of the Landlord.

Issues

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

Summary of the Evidence

- [9] The Rental Unit is situated in a room located in the basement.
- [10] The Landlord and the Tenants entered into a written, fixed-term tenancy agreement for the period of September 1, 2023 to August 31, 2024. However, the Tenants did not move into the Rental Unit until October 1, 2023. Rent in the amount of \$1,250.00 was due on the first day of the month and a \$1,250.00 security deposit was paid on September 30, 2023 in three installments: two e-transfers and a cash payment.
- [11] On April 15, 2024 the Tenants vacated the Rental Unit. The Tenants vacated because of an *Eviction Notice* they received on April 2, 2024 with an effective date of May 31, 2024.
- [12] The Landlord was in fact a sub landlord and the Tenants were sub tenants.

Tenants' Evidence and Submissions

- [13] The Tenants submitted 21 pages of documents into evidence including: a copy of the tenancy agreement, proof of service, text messages, photographs, an email submission, an e-transfer, and an *Eviction Notice (Form 4(A))*. The Tenants submitted one 4 minute and 12 second video into evidence.

The First Application

- [14] The Tenant stated that the First Application is seeking \$2,750.00 in compensation. This includes a return of pro-rated rent for April 2024 in the amount of \$625.00 and \$2,125.00 in compensation for the Landlord's failure to provide services included in the tenancy agreement.
- [15] The Tenant stated that rent for April was paid in full on April 2, 2024 by e-transfer (page 20 of the EP). However, on April 2, 2024 the Landlord served the Tenants with an *Eviction Notice* with an effective date of May 31, 2024 for cause. The Tenant stated that they informed the Landlord they were not disputing the eviction notice and were looking for a new place to live.
- [16] The Tenant stated on April 6, 2024 they advised the Landlord they were leaving at the end of the month. The Tenant stated that on April 12, 2024 they found a new place to live and notified the Landlord that they were vacating on April 15, 2024. The Tenant stated that the Landlord owes \$625.00 in returned rent for April 16-30, 2024.
- [17] The Tenant stated that the \$2,125.00 compensation is because the Landlord breached the tenancy agreement. The Tenant stated that heat, internet and snow removal are included services in the tenancy agreement (page 8 of the EP). The Tenant stated that internet is not mentioned in the tenancy agreement, however, there was an oral agreement with the Landlord to include it. The Tenant stated that throughout the tenancy they never paid any additional fees for internet.
- [18] The Tenant stated that the Landlord never did the snow removal during the winter months. The Tenant stated that they had no out of pocket expenses, but the labour and time. The Tenant stated that the Landlord only shoveled a path to the garbage cans once.
- [19] The Tenant stated the heat would be out for 2-3 weeks at a time for three months straight. The Tenant stated that the Landlord did provide them with an electrical space heater, but it was inadequate.
- [20] The Tenant stated that the internet had intermittent connectivity issues, which happened two or three times.
- [21] The Tenant submitted text messages into evidence (page 15-18 of the EP) informing the Landlord of the above issues.

The Second Application

- [22] The Tenant stated that they paid \$2,500.00 when they moved into the Rental Unit for the security deposit. The Tenant stated that the overpayment of the security deposit was used for rent for one of the months.
- [23] The Tenant stated that on April 12, 2024 via text message, she informed the Landlord that they would be leaving on April 15, 2024. The Landlord responded in text message with:

"Ok
I will check today and refund you money
Thank you" (page 18 of the EP).

- [24] The Tenant stated that after they vacated the Rental Unit on April 15, 2024, they requested their security deposit be returned. The Tenant submitted a text message (page 18 of the EP) on April 17, 2024 requesting their security deposit be returned.
- [25] The Tenant stated that the Landlord never provided them with an application or notice to keep their security deposit. The Tenant stated that they never agreed to allow the Landlord to retain their security deposit. The Tenant stated that they waited until May 1, 2024 to file an application to provide the Landlord with fifteen days.

Analysis

- [26] For the reasons below, the Officer finds that the Landlord must pay the Tenants pro-rated April 2024 rent of \$625.00. The Landlord must also pay \$208.33 in compensation for breaching the tenancy agreement. The Landlord must also pay the Tenants double the \$1,250.00 security deposit, plus interest on the security deposit.

The First Application

- [27] Based upon the evidence presented, the Landlord provided the Tenants an *Eviction Notice* for cause with an effective date of May 31, 2024. The Tenants informed the Landlord when they received the eviction notice that they were not disputing it and would be looking for new living accommodations. On April 12, 2024 the Tenants informed the Landlord that they would be vacating on April 15, 2024, which they did. April's rent was paid in full on April 2, 2024.
- [28] Section 46 of the Act requires a Landlord to mitigate damages that may be caused by the Tenants' abandonment. The Landlord did not participate at the hearing and did not submit any evidence to establish that the Landlord took any steps to mitigate. Therefore, the Tenants are entitled to a return of pro-rated April 2024 rent in the amount of \$625.00 (15 days divided by 30 days multiply \$1,250.00).
- [29] Further, based upon the evidence presented, heat and snow removal are included services in the tenancy agreement. The Tenants' submitted that internet was an oral agreement despite not being included in the tenancy agreement. The Tenants' evidence establishes that there was communication between the parties regarding complaints of no heat, intermittent problems with the internet and snow removal.
- [30] The Tenants have established, on a balance of probabilities, that the Landlord failed to provide snow removal services as required in the tenancy agreement. The Tenants have not established that the Landlord failed to provide heat and/or internet.
- [31] The testimony of the Tenant suggests that the internet was intermittent only two or three times. The Officer cannot conclude this to be a failure of the Landlord to provide a service. Further, the Officer cannot conclude the Landlord failed to provide heat. The testimony from the Tenants describes a consistent failure of the heat for 2-3 week periods of time for three months. However, the evidence does not establish such a timeline and by the Tenants' own submissions, the Landlord did attempt to rectify the situation by providing an electrical space heater.
- [32] The Landlord shall pay the Tenants \$208.33 in compensation for breaching the tenancy agreement and not providing snow removal. The Tenants did not provide an exact amount of times they removed the snow from the walkway at the Rental Unit. The Officer allows for 5-days' worth of rent to be deducted for the number of times the Tenants would have had to shovel the walkways. The Officer calculates this compensation as follows: (5 days divide 30 days multiply \$1,250.00).
- [33] The First Application is allowed, in part. The Landlord shall pay the Tenants \$833.33.

The Second Application

- [34] In Order LR23-76¹ the Island Regulatory and Appeals Commission (the “Commission”) discussed the law regarding the retention of security deposit, 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)).

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 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...”

- [35] Based upon the evidence presented, on April 15, 2024 the Tenants vacated the Rental Unit earlier than the effective date of the eviction notice. Based upon the evidence presented, the Landlord’s response accepted the April 15 vacate date, and even said he would refund the Tenants’ money. The Landlord had 15-days to either file an application with the Rental Office or return the full security deposit and interest to the Tenants. The Landlord did neither of the required statutory options.
- [36] As a result, the Second Application is allowed, the Landlord must pay the Tenants double the security deposit, and interest on the security deposit.

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

Conclusion

- [37] The First Application is allowed, in part.
- [38] The Second Application is allowed.
- [39] The Officer's calculations are as follows:

Item	Amount
Security Deposit	\$1,250.00
Interest (30 SEP 2023 to 11 JUN 2024)	\$20.49
Security Deposit (Double Awarded)	\$1,250.00
Pro-rated April 2024 Rent (15 of 30 days)	\$625.00
Compensation for breach of tenancy agreement	\$208.33
Total	\$3,353.82

- [40] The Landlord must pay the Tenants \$3,353.82 by July 2, 2024.
- [41] This Order will be served to the parties by email.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenants \$3,353.82 by July 2, 2024.

DATED at Charlottetown, Prince Edward Island, this 11th day of June, 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.