

## Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 16, 2024, the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Tenant Application”) with the Residential Tenancy Office (the “Rental Office”), requesting a return of the security deposit. On May 21, 2024, the Tenant amended the Tenant Application to request a return of double the security deposit, an overpayment of the security deposit, and a return of rent due to an unlawful rent increase.
- [3] On May 17, 2024, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “Landlord Application”) with the Rental Office, seeking compensation in the amount of \$2,500.00 for damages caused by the Tenant.
- [4] On June 25, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant, a Tenant witness, and the Landlord participated in the hearing.

## Issues to be Decided

- i. Is the Tenant entitled to a return of double the security deposit or an overpayment of the security deposit?
- ii. Is the Tenant entitled to a return of rent?
- iii. Is the Landlord entitled to compensation?

## Summary of the Evidence

- [5] On September 1, 2022, the parties entered into a written fixed-term tenancy agreement for the Rental Unit, which converted to a month-to-month agreement. The Rental Unit was a room rental in a house (the “Residential Property”). Rent was \$850.00 due on the first day of the month. A security deposit of \$1,700.00 was paid. The Tenant vacated on April 1, 2024.

### Preliminary Matter

- [6] On May 24, 2024, the owner of the Residential Property sent a letter to the Rental Office stating that the Landlord was authorized to represent to owner regarding the Residential Property. However, the Officer notes that the tenancy agreement was signed by the Landlord, the Landlord Application was filed by the Landlord, and the Tenant Application named the Landlord as the respondent. For these reasons the Officer finds that the Landlord is the correct party to name as the Landlord as opposed to the owner of the Residential Property.

### Tenant’s Evidence and Submissions

- [7] The Tenant’s evidence is summarized as follows. The Tenant paid \$1,700.00 for the security deposit but rent was only \$850.00. He is seeking a return of the \$1,700.00 as well as double the security deposit for being overcharged, as it should only have been \$850.00. The Tenant received a \$1,700.00 e-transfer from the Landlord on September 1, 2023, but this was not a return of the security deposit. The e-transfer was a part of a personal business deal the parties had together to sublet another property and that \$1,700.00 was sent to another landlord by the Tenant.
- [8] The Tenant is seeking a return of rent of \$850.00 for having to live with a roommate and \$500.00 (\$100.00 x 5) for five months of paying an extra hundred dollars for a smaller room, totaling \$1,350.00. In mid-September of 2023, the Landlord asked the Tenant to move from his upstairs room into a room in the basement, as the Landlord’s girlfriend was going to be moving into the Tenant’s upstairs room.

- [9] The room the Tenant had to move into already had a tenant, who is the Tenant's witness, and the Tenant and his witness had to take turns sleeping on the bed or the floor. The Tenant had to share the room for two months until his witness moved out and then the Tenant had the room to himself until he vacated. The Tenant and his witness denied they had a relationship and stated they did not really know each other before becoming roommates. The witness stated she only lived in the room during October 2023.
- [10] The Tenant denied causing the damages alleged by the Landlord. There were other tenants living in the house and they could have caused the damages. Some of the damages were already like that when he moved in.

#### **Landlord's Evidence and Submissions**

- [11] The Landlord's evidence is summarized as follows. The tenancy agreement ended on September 1, 2023, and the Tenant stated he would be moving out. The Landlord returned the \$1,700.00 security deposit and a copy of the e-transfer notice was submitted into evidence. The Landlord denied the e-transfer was for a business deal with the Tenant. The Tenant was unable to find another rental until April 2024 and the Landlord continued to rent to the Tenant until the Tenant vacated.
- [12] The Landlord denied that the Tenant lived in a bedroom upstairs and stated the Tenant always lived in the downstairs bedroom. The rent for the upstairs bedroom is \$900.00, so that is what he would have charged the Tenant if he had that room. The Landlord lives in one of the two upstairs bedrooms and the Landlord's girlfriend moved into his room. She did not move into the other upstairs bedroom as another tenant was occupying that upstairs room.
- [13] The Landlord believes the Tenant and the Tenant's witness had a relationship and they slept in the same bed in the downstairs room. The Landlord only had a one-month tenancy agreement with the Tenant's witness and it began in October 2023 as opposed to mid-September as the Tenant stated.
- [14] The Tenant caused damages to the property and admitted that he caused the damages. The Tenant broke the patio screen door by walking through it, damaged a towel rack, left dirt on the wall, damaged the wall and door, and removed the fire alarm. Photos and videos of the damages were submitted into evidence. It cost the Landlord \$2,500.00 plus tax in labour and materials to repair these damages.

#### **Tenant's Post Hearing Evidence and Submissions**

- [15] After the hearing the Tenant sent the Rental Office copies of several e-transfers and a bank statement as additional evidence. The e-transfers show some transfers being sent to another individual on various dates. Three e-transfers were received from the Landlord, with one being on September 1, 2023, for \$1,700.00. The Tenant submitted that these e-transfers show that he received money from the Landlord and sent it to another landlord to rent property to sublet to other individuals. The Tenant submitted that the Landlord used the Tenant's name to rent a house to make money and the Tenant did not receive any money from the deal.
- [16] The Tenant submitted that the rent at the house they were subletting was \$1,850.00 and the security deposit was also \$1,850.00. The Tenant submitted that the Landlord e-transferred the Tenant \$1,700.00 and gave the Tenant \$150.00 in cash for a total of \$1,850.00 for the new security deposit.

- [17] The Tenant sent the Rental Office copies of text messages dated August 27, 2022, which he submitted were from his aunt. The Tenant submitted his aunt found the upstairs room rental online and sent the Tenant a copy of the listing. The Tenant translated his aunt's message as follows: "Landlord has rent the 800 downstairs room to other people, upstairs room is 850, if you don't like, you can find other place." The Tenant provided a photograph of the downstairs bedroom from before he vacated the Residential Property and he submitted there is no damage in the photo.

### **Landlord's Post Hearing Evidence and Submissions**

- [18] On June 26, 2024, the Landlord responded to the Tenant's additional evidence. The Landlord submitted that he returned the security deposit on September 1, 2023. He submitted he was not going to respond to the Tenant's other evidence as it was irrelevant. The Landlord submitted an invoice for repairs for \$2,500.00 plus HST totaling \$2,875.00.
- [19] A copy of this additional evidence was sent to the Tenant on June 26, 2024, and he was asked to reply with any submissions by June 28, 2024. On July 2, 2024, the Tenant replied and submitted he could not locate any information online about the company the Landlord used for the repairs and the invoice may be fake. The additional evidence was forwarded to the Landlord. No further submissions were received.

### **Analysis**

- [20] The Tenant Application is seeking a return of double the security deposit, a return of overpayment of the security deposit, and a return of rent. The Landlord Application is seeking compensation for damages. In such matters it is each party's burden to prove, on a balance of probabilities, the claims made in their application. This means the parties must provide the Officer with sufficiently clear and convincing evidence to support their claims. The relevant law is as follows:

#### **28. Tenant responsible for undue damage**

- (4) *A tenant of a rental unit shall repair, in a good and professional manner, undue damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (5) *A tenant is not required to make repairs for reasonable wear and tear to the rental unit or common areas of the residential property.*

#### **39. Obligations on vacating**

- (2) *When a tenant vacates a rental unit, the tenant shall*
- (a) *leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.*

#### **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.*

**Issue i: Is the Tenant entitled to a return of double the security deposit or an overpayment of the security deposit?**

- [21] The parties agreed that the Tenant paid \$1,700.00 for a security deposit, however, the parties provided conflicting evidence regarding the September 1, 2023, e-transfer of \$1,700.00 to the Tenant. The Landlord stated it was a return of the security deposit as the tenancy agreement had ended and the Tenant stated he would be vacating. The Tenant stated this money was not a return of his security deposit but it was for a security deposit for a property the parties were going to rent and sublet.
- [22] The Officer is satisfied, on a balance of probabilities, that the \$1,700.00 e-transfer was a return of his security deposit. Specifically, the Officer notes the date of the e-transfer was the last day of the fixed-term tenancy agreement, the amount was the same amount the Tenant had paid, and the e-transfer message stated that it was for a "Damage deposit."
- [23] The Officer finds that the Tenant has provided sufficient evidence to establish that he did overpay the security deposit by \$850.00. However, the Landlord returned the security deposit before the tenancy ended. The Officer finds that the Tenant is not entitled to a return of double the security deposit. This claim is denied.
- [24] The Officer does find that the Tenant is entitled to a return of the interest which had accrued on the security deposit and overpayment during the time it was held by the Landlord, in the amount of \$28.41.

**Issue ii: Is the Tenant entitled to a return of rent?**

- [25] The Officer finds that the parties provided conflicting evidence as to whether the Tenant moved from an upstairs bedroom to a downstairs bedroom. The Tenant stated the Landlord asked him to move to a downstairs room in the house and he was required to live with the Tenant's witness for approximately two months. The Landlord stated the Tenant was always in the smaller room and was never asked to move.
- [26] The Tenant and the Tenant's witness provided conflicting testimony as to when the Tenant may have moved into the smaller room. The Tenant stated he moved into the smaller room in September 2023 and had to share it for two months. The Tenant's witness stated she did not move into the Residential Property until October 2023 and only stayed for one month. Based on the evidence provided, the Officer finds that the Tenant has not established, on a balance of probabilities, he is entitled to a return of rent. This claim is denied.

**Issue iii: Is the Landlord entitled to compensation?**

- [27] The Landlord stated there were \$2,500.00 in damages caused by the Tenant and the Tenant admitted to the damages. The Tenant denied causing any damages and stated some items were damaged when he moved in and that there were other tenants in the house who may have caused the damages.
- [28] The Officer finds that the Landlord has not provided sufficient evidence, such as inspection reports or photographs of the property, from before the Tenant moved in, to establish the condition of the property at that time. There were also other tenants living in the property at the same time as the Tenant and the Officer finds that the Landlord has not provided sufficient evidence to establish the alleged damages were caused specifically by the Tenant. This claim is denied.

**Conclusion**

- [29] The Landlord Application is denied and the Tenant Application is allowed in part.
- [30] The Landlord shall return the interest on the security deposit and overpayment to the Tenant in the amount of \$28.41 by July 31, 2024.
- [31] This Order will be served to the parties by e-mail.

**IT IS THEREFORE ORDERED THAT**

- A. The Landlord shall return the interest on the security deposit and overpayment to the Tenant in the amount of \$28.41 by July 31, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 10th day of July, 2024.

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(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.