

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 13, 2024, the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”), requesting a return of the security deposit pursuant to the Act. A copy was served to the Landlords on the same date.
- [3] On July 4, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant, a Tenant witness, and the Landlords participated in the hearing.

ISSUE

Is the Tenant entitled to a return of the entire security deposit?

SUMMARY OF THE EVIDENCE

- [4] Sometime in 2019, the parties entered into a written fixed-term tenancy agreement for the Rental Unit which converted to a month-to-month agreement. Rent was \$907.00 due on the first day of the month. A security deposit of \$500.00 was required and paid. The Tenant vacated on April 26, 2024, by mutual agreement of the parties. The parties agreed the Tenant’s common law wife was named in the tenancy agreement but during the tenancy she had moved to a senior’s home and ceased being a tenant.

Landlords’ Evidence and Submissions

- [5] The Landlords’ evidence is summarized as follows. The Landlords cannot locate a copy of the written tenancy agreement. The Tenant moved into the Rental Unit sometime in 2019 but they do not remember when in 2019 this occurred.
- [6] One of the Landlords and the Tenant inspected the Rental Unit before the Tenant vacated and moved out his belongings. The Landlord agreed that he told the Tenant he may return some of the security deposit. After the Tenant had vacated, the Landlords observed that all the walls and some doors in the Rental Unit were covered with cigarette smoke residue. Photographs of the Rental Unit after the Tenant vacated were submitted into evidence.
- [7] The Landlords had to hire professional cleaners to remove the smoke stains and smell from the Rental Unit. It took several days to clean and repaint the unit to get it ready for another tenant. It cost approximately \$4,000.00 in labour and materials to repair and paint the unit.
- [8] On May 1, 2024, the Landlords mailed a “*Form 8 – Notice of Intention to Retain Security Deposit*” to the Rental Unit which stated the Landlords were retaining the security deposit. The Landlords did not know the Tenant’s new address and their practice in the past has always been to mail the Form 8 to the Tenant’s last known address if the new address is not known. A copy of the Form 8 was submitted into evidence.

Tenant’s Evidence and Submissions

- [9] The Tenant’s evidence is summarized as follows. The Landlords gave the Tenant permission to smoke in the Rental Unit. One of the Landlords told the Tenant they would return \$400.00 of the security deposit after the inspection of the unit. The Tenant did not receive a copy of the Form 8 and the first time the Tenant saw the form was in the submitted evidence. The Landlords knew which senior’s home the Tenant was moving to and they could have mailed the Form 8 to the Tenant’s new address. The Tenant does not have a copy of the tenancy agreement and does not remember when in 2019 he moved into the Rental Unit.

ANALYSIS

[10] The Application is seeking a return of the security deposit. The Tenant initiated the Application and bears the onus of proving their claim on a balance of probabilities. 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.*

Landlord may retain amount from security deposit

- (2). *A landlord may retain from a security deposit an amount that*
- (a) *the Director has previously ordered the tenant to pay to the landlord; and*
 - (b) *remains unpaid at the end of the tenancy.*

Retention by landlord, other circumstances

- (3). *A landlord may retain an amount from a security deposit if*
- (a) *at the end of the tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
 - (b) *After the end of the tenancy, the Director orders that the landlord may retain the amount.*

Consequences of non-compliance

- (4). *Where a landlord does not comply with this section, the landlord*
- (a) *shall not make a claim against the security deposit; and*
 - (b) *shall pay the tenant double the amount of the security deposit.*

[11] In Order LR23-76 the Island Regulatory Appeals Commission discussed the law regarding the retention of security deposits, as well as the service of a Form 8, 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...”

- [12] The evidence establishes that the tenancy agreement ended on April 26, 2024. The Landlords did not file an application with the Rental Office to retain the security deposit within the fifteen-day timeline. There are no earlier Rental Office decisions authorizing the Landlords to retain the security deposit. The parties did not come to an agreement that the Landlords could retain the security deposit. As a result, the Landlords must pay the Tenant double the security deposit plus interest on the original security deposit.
- [13] The Landlords stated that they did not know the Tenant’s address at the time he vacated the Rental Unit. However, the Application contains the Tenant’s address and it was served to the Landlords on May 13, 2024. Therefore, more than 15 days have also passed since the Landlords knew the Tenant’s mailing address.

CONCLUSION

- [14] The Application is allowed.
- [15] This Order will be served to the parties by e-mail.
- [16] As neither party can remember when in 2019 the Tenant moved into the Rental Unit, the Officer will calculate the interest on the security deposit from the middle of 2019 until the date this order is issued. The calculations are as follows:

Item	Amount
Security Deposit	\$500.00
Interest on \$500.00 (July 2, 2019 – July 22, 2024)	\$27.53
Double the security deposit	\$500.00
Total	\$1,027.53

IT IS THEREFORE ORDERED THAT

A. The Landlords shall pay the Tenant \$1,027.53 by August 12, 2024.

DATED at Charlottetown, Prince Edward Island, this 22nd day of July, 2024.

(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.