

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 17, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for double the security deposit, in the amount of \$2,500.00 plus interest. The Application was emailed to the Landlord.
- [3] On July 4, 2024 the Rental Office emailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [4] On July 22, 2024 the Rental Office emailed the parties the evidence package.
- [5] On July 25, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant and the Landlord participated at the hearing.

ISSUE

- i. Must the Landlord pay the Tenant double the security deposit?

SUMMARY OF EVIDENCE

- [6] The Rental Unit is a 2-bedroom winterized cottage owned by the Landlord.
- [7] On September 24, 2023 the parties entered into a written month-to-month tenancy agreement for the Rental Unit. Rent was \$1,250.00 due on the first day of the month. A \$1,250.00 security deposit was paid in September 2023.
- [8] The Tenant vacated the Rental Unit on June 1, 2024 and the tenancy ended.

TENANT’S EVIDENCE AND SUBMISSIONS

- [9] The Tenant submitted 9-pages of documents into evidence including: a copy of the tenancy agreement, text messages, and written submissions.
- [10] The Tenant stated that the Landlord did not return his security deposit. The Tenant stated that the Landlord has no claim against the security deposit.
- [11] The Tenant stated that on June 17, 2024, the Landlord offered to return a portion of the security deposit, and the Landlord was going to retain a portion for cleaning the Rental Unit. The Tenant stated that he denied the Landlord’s offer and filed the Application.
- [12] In response to the Landlord’s submissions, the Tenant denied that his dog caused damage to the Rental Unit. The Tenant denied that the Rental Unit smelled like urine, and that the floors in the Rental Unit were not replaced.

LANDLORD’S EVIDENCE AND SUBMISSIONS

- [13] The Landlord submitted 8-pages of documents into evidence including: an estimation for replacing damaged flooring, and photographs of the Rental Unit.
- [14] The Landlord stated that he did a quick inspection before the Tenant vacated the Rental Unit. However, on June 3, 2024 he did a more in-depth inspection and found significantly more damage. The Landlord stated that a lot of dog hair was in the Rental Unit, which required cleaning. The Landlord stated that he smelled dog urine throughout the Rental Unit.

- [15] The Landlord stated that after inspecting the Rental Unit in further detail, he realized more work was required. The Landlord stated that he wanted to work with the Tenant, and offered to return \$1,000.00. The Landlord stated that he was only going to retain \$250.00 for cleaning.
- [16] The Landlord stated that he was very busy and that was why he did not file an application with the Rental Office seeking to retain the security deposit.

ANALYSIS

- [17] The Application is made in accordance with section 75 of the Act, and seeks a monetary order for double the security deposit pursuant to subsection 40(4) of the Act. The relevant law states:

59. Application respecting contravention

Where a landlord contravenes the obligations set out in sections 22 to 24 and 26 to 29, a material term of the tenancy agreement or a statutory condition set out in Part 2, the tenant may make an application to the Director under section 75 for an order specified under subsection 85(1). [emphasis added]

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. [emphasis added]*

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.*

- [18] In Order LR23-69, the Island Regulatory and Appeals Commission (the "Commission") commented the following as it relates to section 40 of the Act:

"Subsections 40(2) and (3) are the only exceptions to the provisions contained in section 40. The Commission finds that there is no exemption from the rigours of section 40..."

- [19] In Order LR24-10, the Commission more recently commented the following as it relates to section 40 of the Act and the consequences of non-compliance:

“Section 40 of the Act imposes strict requirements on a landlord and failure to meet those requirements incurs a very substantial penalty. The Commission notes that there is no provision in the Act to allow the Director or the Commission to temper or waive the provisions set out in section 40 of the Act. The Landlords feel that the application of section 40 to them, in these factual circumstances, is unjust. However, as the Act does not provide the Director or the Commission any discretion to waive the provisions of section 40, the Commission finds that there is no error in Order LD23-617 and accordingly the Commission dismisses the appeal and confirms Order LD23-617.”

- [20] In this case, it is undisputed that the Tenant vacated the Rental Unit on June 1, 2024 and the tenancy ended. The Landlord had 15-days to either return the security deposit to the Tenant or file a *Form 2 (B) Landlord Application to Determine Dispute* with the Rental Office. The evidence establishes that the Landlord did neither. Therefore, the Officer finds that the Landlord did not comply with subsection 40(1) of the Act; triggering subsection 40(4) of the Act.
- [21] The Officer finds that the Landlord must return the Tenant's security deposit, plus interest and pay the Tenant double the amount of the security deposit. The Application is allowed.

CONCLUSION

- [22] The Application is allowed.
- [23] The Officer's calculations are as follows:

Item	Amount
Security Deposit	\$1,250.00
Interest (24/09/23 – 21/08/24)	\$26.46
Security Deposit (Double Awarded)	\$1,250.00
Total Compensation Awarded to Tenants	\$2,526.46

IT IS THEREFORE ORDERED THAT

- I. The Landlord shall pay the Tenant \$2,526.46 by September 11, 2024.

DATED at Charlottetown, Prince Edward Island, this 21st day of August, 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 (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.