

**INTRODUCTION**

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On February 22, 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 return of the security deposit.
- [3] On March 15, 2024, the Rental Office emailed the Application to the Landlord as the parties were unable to have contact pursuant to an Undertaking.
- [4] On August 29, 2024, the Rental Office emailed the parties notice of a paper-based hearing scheduled for October 3, 2024. The matter was delayed between March and August 2024 due to complications arising out of the parties’ inability to have contact.
- [5] Between August 29, 2024, and October 3, 2024, all evidence submitted by each party was shared with the other party. Each party also had to opportunity to submit evidence in response to the other party’s evidence.
- [6] On October 3, 2024, a hearing was held in writing before me. The Tenant and the Landlord both submitted evidence for the hearing.

**ISSUE**

Must the Landlord return the security deposit to the Tenant?

**SUMMARY OF EVIDENCE**

- [7] On December 2, 2023, the parties entered into an oral month-to-month tenancy agreement for the Unit. The Unit consisted of a room rental and shared common spaces in an apartment (the “Residential Property”). Rent was \$950.00 due on the first day of the month and a \$950.00 security deposit was paid on November 28, 2023. The Tenant vacated the Unit on January 23, 2024, by mutual agreement, and the tenancy ended.

**The Tenant’s evidence is summarized as follows.**

- [8] The Tenant rented a room in an apartment and the other two rooms were occupied by the Landlord and the Landlord’s mother. The Landlord began asking the Tenant for extra money for electricity and wifi. The Landlord and his mother would harass the Tenant when she was in the common areas of the Residential Property. The Tenant found the Landlord and his mother snooping around in her bedroom. The Tenant felt unsafe living in the Unit and the parties mutually agreed to end the tenancy.
- [9] On the day the Tenant was moving out she asked for the security deposit to be returned. The Landlord only returned \$50.00 and the Tenant and Landlord got into an argument. The Landlord assaulted the Tenant and the Tenant responded by throwing her phone at the Landlord.
- [10] The Tenant disputed the Landlord returned \$400.00 of the security deposit or that she agreed to allow \$295.00 of the security deposit to be retained for rent. The Tenant submitted into evidence a copy of an e-transfer notice for \$950.00 dated November 28, 2023, as well as a written submission.

**The Landlord's evidence is summarized as follows.**

- [11] The Tenant and her daughter moved into the Unit on December 2, 2023. The other two rooms in the Residential Property were occupied by the Landlord and his mother. Rent included internet but electricity and heat were billed separately. The Tenant paid first month's rent and the security deposit when she moved in.
- [12] After moving in the Tenant would have parties, eat the Landlord's food, make noise, and cause damage to the apartment. On December 8, 2023, the Landlord told the Tenant the rental arrangement was not working out. The Landlord asked the Tenant to vacate within the next two months and the Tenant agreed.
- [13] On January 23, 2024, the Tenant was moving out and she told the Landlord that she would not be paying the outstanding rent of \$295.00. The Tenant said the Landlord could deduct the balance from the security deposit, which would leave \$655.00 of the security deposit. The Landlord returned \$450.00 in cash to the Tenant and told the Tenant the remainder of the security deposit may be returned after a move-out inspection.
- [14] The Tenant then requested the entire security deposit of \$950.00 and the parties got into an argument. The Tenant assaulted the Landlord and hit him with her phone. Police and EMS were called and the Landlord had to get stitches at the hospital. The Tenant was charged with assault and she was placed on an Undertaking not to have any contact with the Landlord.
- [15] The Tenant owes \$432.96 for electricity and \$295.00 for rent. It cost the Landlord \$150.00 for an ambulance fee and \$942.00 in treatment costs. It cost the Landlord \$25.00 to obtain a letter from the Charlottetown Police detailing the incident which occurred at the Unit on January 23, 2024. The Landlord submitted into evidence a written submission, e-transfer notices, a maritime electric bill, hospital and EMS bills, and photographs of the Unit and his injury.

**ANALYSIS**

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

**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.*

**(2) Retention by landlord, other circumstances**

*A landlord may retain an amount from a security deposit if*

- (a) *at the end of a 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.*

- [17] The parties had conflicting evidence regarding how much of the security deposit had been returned. The Landlord stated he had returned \$450.00 and the Tenant agreed to the Landlord retaining \$295.00 for rent. The Tenant submitted that only \$50.00 was returned and she did not agree to allow the Landlord to retain any of the security deposit.
- [18] I find that the Landlord has not provided sufficient evidence, such as a receipt, e-transfer notice, or witness testimony, to establish that he had returned more than \$50.00 of the security deposit to the Tenant. The Landlord has also not provided any evidence that the Tenant has agreed in writing that that the Landlord may retain a portion of the security deposit.
- [19] In this case, it is undisputed that the Tenant vacated the Unit on January 23, 2024, and the tenancy ended. The Landlord had 15-days to either return the entire 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, I find that the Landlord did not comply with subsection 40(1) of the Act, triggering subsection 40(4) of the Act. The Landlord shall not make a claim against the security deposit and shall pay the Tenant double the security deposit.

### CONCLUSION

- [20] The Application is allowed.
- [21] I find that the Landlord must return the remainder of the security deposit, plus interest, and pay the Tenant double the amount of the remainder of security deposit by the timeline below.
- [22] The calculations are as follows:

Item	Amount
Security Deposit	\$950.00
Interest on \$950.00 (Nov. 28, 2023 – Jan. 23, 2024)	\$3.56
Security Deposit Returned	(\$50.00)
Interest on \$903.56 (Jan. 24, 2024 – Oct. 11, 2024)	\$14.50
Security Deposit (Double Awarded)	\$900.00
<b>Total Compensation Awarded to the Tenant</b>	<b>\$1,818.06</b>

### IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$1,818.06 by October 31, 2024.

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