

INTRODUCTION

[1] The Tenant is seeking a return of double the security deposit plus \$200.00 in compensation.

DISPOSITION

[2] I find that the Landlord must return the security deposit plus interest to the Tenant.

[3] The Tenant's request for \$200.00 in compensation is denied.

BACKGROUND

[4] The Unit is a room with shared common spaces in an apartment.

[5] On August 7, 2024, the Tenant paid the Landlord a \$650.00 security deposit. The rent was \$650.00, due on the first day of the month. The Tenant did not move into the Unit.

[6] On October 11, 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 double the security deposit plus \$200.00 in compensation.

[7] On October 30, 2024, the Rental Office mailed and emailed the parties a notice of a teleconference hearing scheduled for November 19, 2024.

[8] On November 15, 2024, the Rental Office emailed the parties an evidence package.

[9] On November 18, 2024, the Rental Office called the Landlord with the teleconference details. There was no answer, and a voicemail was left for the Landlord.

[10] On November 19, 2024, the Tenant participated in a teleconference hearing to determine the Application. I called the Landlord and left a voicemail message. After ten minutes, the hearing proceeded in the Landlord's absence.

[11] The Tenant confirmed receiving the evidence package and stated that all submitted documents were included.

ISSUES

A. Did the Landlord and the Tenant enter a tenancy agreement?

B. Must the Landlord return double the security deposit plus interest and compensate the Tenant \$200.00?

ANALYSIS

A. Did the Landlord and the Tenant enter a tenancy agreement?

[12] The Tenant stated he answered an online advertisement to rent the Unit, and on August 7, 2024, the Tenant sent the Landlord a \$650.00 security deposit. On August 8, 2024, the Landlord sent the Tenant a copy of the tenancy agreement to sign. The tenancy agreement was for a fixed term, but the Tenant only wanted a month-to-month agreement because he was waiting for a room at his school's residence to become available.

- [13] The Tenant did not sign the tenancy agreement, and a room in residence became available on August 12, 2024. The Tenant messaged the Landlord, said he would no longer need to move into the Unit, and requested the security deposit back. The Landlord said the security deposit would be returned once a new tenant rented the Unit.
- [14] The last time the Landlord messaged the Tenant was on August 20, 2024, and the Tenant has had no contact with the Landlord since then. Messages between the parties were submitted into evidence.
- [15] Clause 1(w) of the Residential Tenancy Act (the "Act") defines "tenancy agreement" as:
- "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and the provision of services and facilities."*
- [16] In Order LR24-42, the Island Regulatory and Appeals Commission (the "Commission") determined a matter in which a tenant did not move into a unit as the parties could not agree on the fundamental terms of a tenancy agreement. The Commission noted no written tenancy agreement was prepared, and the parties only had an agreement in principle. The Commission ordered the landlord to return the security deposit plus interest to the tenant.
- [17] In this case, the Tenant's undisputed evidence establishes that he thought he was entering into a month-to-month agreement. When the Tenant received a written copy of the tenancy agreement, he found it was for a fixed-term agreement. The Tenant did not sign the agreement and told the Landlord he was not moving into the Unit.
- [18] Like LR24-42, the parties had an agreement in principle, could not agree on the tenancy agreement's fundamental terms, and the Tenant did not move into the Unit. I find that no tenancy agreement was entered into between the parties.

B. Must the Landlord return double the security deposit plus interest and compensate the Tenant \$200.00?

- [19] Section 40 of the Act addresses the retention and return of a security deposit, stating in part as follows:
- (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) 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.
- (3) 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.

- (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.*

[20] Section 40 requires that a tenancy exist in order for a tenant to successfully claim double the security deposit. The timeline for a Landlord to return the security deposit or file an application with the Rental Office is 15 days from when the tenancy ends. In this case, a tenancy did not begin or end because no tenancy agreement was formed.

CONCLUSION

[21] The Application is allowed in part.

[22] The Tenant's request for compensation of \$200.00 is denied.

[23] I find that the Landlord must return the security deposit, plus interest, calculated as follows:

Item	Amount
Security Deposit	\$650.00
Interest (Aug. 7/24 – Dec. 12/24)	\$5.07
Total	\$655.07

IT IS THEREFORE ORDERED THAT

1. The Tenant's request for compensation of \$200.00 is denied.
2. The Landlord must pay the Tenant \$655.07 by January 2, 2025.

DATED at Charlottetown, Prince Edward Island, this 12th day of December, 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.