

INTRODUCTION

[1] The Tenant is seeking a return of double the security deposit plus interest.

DISPOSITION

[2] I find that the Landlord must compensate the Tenant double the security deposit plus interest on the original security deposit.

BACKGROUND

[3] The Unit is an apartment in a multi-unit building.

[4] On July 26, 2024, the parties entered into an oral, month-to-month tenancy agreement for the Unit. The Tenant paid a \$2,000.00 security deposit at the beginning of the tenancy. Rent in the amount of \$2,000.00 was due on the first day of the month.

[5] I note that after April 8, 2023, section 11 of the Residential Tenancy Act (the "Act") states that a landlord must prepare a written tenancy agreement for any new tenancy agreements.

[6] On October 1, 2024, the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks a return of double the security deposit.

[7] On October 31, 2024, the Rental Office mailed the parties notice of a teleconference hearing scheduled for November 21, 2024.

[8] On November 18, 2024, the Rental Office emailed the parties an evidence package.

[9] On November 20, 2024, the Rental Office left a voicemail for a Landlord representative (the "Representative") with the teleconference details.

[10] On November 21, 2024, the Tenant participated in a teleconference hearing to determine the Application. I called the Representative, left a voicemail, and waited ten minutes. The hearing proceeded in the Representative's absence.

[11] The Tenant confirmed receipt of the evidence package and that everything submitted to the Rental Office was included.

ISSUE

A. Must the Landlord compensate the Tenant double the security deposit plus interest?

ANALYSIS

[12] The Tenant stated he told the Representative on August 17, 2024, that he would be moving out of the Unit at the end of August. The Tenant wanted to move out because there was a foul smell in the Unit, and the neighbourhood was unsafe. The Representative told the Tenant he would move him to another one of the Landlord's apartments, but he did not follow through.

[13] The Tenant moved out on August 31, 2024, and messaged the Representative for a return of the security deposit. The Representative did not return the security deposit and stopped communicating with the Tenant. Copies of messages between the parties were submitted into evidence.

- [14] 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.*
- [15] The Tenant's undisputed evidence establishes that the parties were in a month-to-month tenancy agreement, and the Tenant moved out on August 31, 2024. Based on the notice the Tenant provided on August 17, 2024, I find that the end of the tenancy would be September 30, 2024, at the latest, as the Tenant was required to give the Landlord at least one full month's notice and be a day before rent is due.
- [16] After the tenancy agreement ended, the Landlord had 15 days (October 15, 2024) to either return the security deposit to the Tenant or file an application with the Rental Office to keep the security deposit, but the Landlord did neither. Even after receiving a copy of the Application, the Landlord did not apply with the Rental Office.
- [17] No earlier Rental Office decisions authorize the Landlord to keep the security deposit. At the end of the tenancy, the parties did not enter a written agreement permitting the Landlord to keep the security deposit.
- [18] I find that the Landlord did not comply with the Section 40 requirements for retaining a security deposit. Therefore, by operation of law, the Landlord must compensate the Tenant double the security deposit plus interest on the security deposit under subsection 40(4), as calculated below.
- [19] The Island Regulatory and Appeals Commission Order LR24-48 commented on the consequences for landlords who do not comply with section 40 of the Act:
- "The Commission has made it abundantly clear to landlords on numerous past appeals filed since the Act came into force that a failure by a landlord to comply with the requirements of section 40 of the Act will result in serious consequences for that landlord and neither the Rental Office or the Commission has any power to temper, ease or show mercy to landlords in this regard. Section 40, as is the entire Act, is the creation of the Legislative Assembly of Prince Edward Island and both the Rental Office and the Commission do not possess inherent jurisdiction and only have the powers granted under the Act, and in the case of the Commission, also granted under the Island Regulatory and Appeals Commission Act."*

CONCLUSION

[20] The Application is allowed.

[21] I find that the Landlord must pay the Tenant double the security deposit plus interest on the original security deposit, according to the timeline below, calculated as follows:

Item	Amount
Security Deposit	\$2,000.00
Interest (July 26/24 – Dec. 17/24)	\$17.70
Security Deposit (Double Awarded)	\$2,000.00
Total	\$4,017.70

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$4,017.70 by January 6, 2025.

DATED at Charlottetown, Prince Edward Island, this 17th day of December, 2024.

(sgd.) Mitch King

Mitch 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.