

INTRODUCTION

- [1] The Landlord seeks to keep the Tenant's security deposit, including interest, for prorated February 2025 rent and March 2025. The Landlord also seeks additional compensation for rental income losses for other rental units, in the amount of \$2,459.00.
- [2] The Tenant seeks the return of the security deposit, including interest, and compensation for double the security deposit.

DISPOSITION

- [3] The Landlord has not established a valid claim for the security deposit, including interest and additional compensation.
- [4] The Landlord must return the Tenant's security deposit, including interest to the Tenant. The Landlord does not have to compensate the Tenant double the security deposit.

BACKGROUND

- [5] The Unit is a one-bedroom and one-bathroom unit in a 14-unit building (the "Residential Property").
- [6] On January 20, 2025 the parties discussed by text message the Tenant renting a rental unit in the Residential Property. After another rental unit became unavailable, the Tenant showed interest in the Unit.
- [7] Between January 24 and February 6, 2025 the parties discussed the terms of the tenancy. The tenancy was to begin February 19, 2025. Rent was \$796.00, due on the first day of the month. On January 31, 2025 the Tenant informed the Landlord that he wanted the Unit. On February 6, 2025 the Tenant paid a \$796.00 security deposit. The parties did not discuss a fixed-term or month-to-month term.
- [8] On February 15, 2025 the Tenant informed the Landlord that he would not move into the Unit until March 1, 2025, and requested that the tenancy agreement be month-to-month. The Landlord stated that the Unit was cleaned and was ready for move-in. The Landlord did not disagree with the Tenant moving into the Unit on March 1, 2025. However, the Landlord did not respond to the Tenant's request for a month-to-month term.
- [9] On February 21, 2025 the Tenant informed the Landlord that he had lost his job and he was not able to afford the Unit.
- [10] On February 27, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Residential Tenancy Office (the "Rental Office") seeking the return of the security deposit, including interest, and compensation for double the security deposit.
- [11] On February 28, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Rental Office seeking to keep the Tenant's security deposit, including interest for rent owing.
- [12] On March 17, 2025 the Landlord amended the Landlord Application, seeking additional compensation for rental income losses for other rental units in the Residential Property, in the amount of \$2,459.00. Collectively, the Tenant Application and the Landlord Application are referred to as the "Applications."
- [13] The Applications were sufficiently served to the respondent parties under subsection 76(2) of the *Residential Tenancy Act* (or the "Act").

- [14] On March 20, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for April 10, 2025, along with copies of the Applications.
- [15] On April 4, 2025 the Rental Office emailed the parties a 26-page PDF document (the "Evidence Package").
- [16] On April 10, 2025 the Tenant and the Landlord joined the teleconference hearing. The parties confirmed receipt of the Evidence Package and confirmed that all documents submitted to the Rental Office were included.

ISSUES

- A. Has the Landlord established claims against the Tenant for rent owing and rental income losses?
- B. Must the Landlord compensate the Tenant double the security deposit?

ANALYSIS & FINDINGS

A. Has the Landlord established claims against the Tenant for rent owing and rental income losses?

- [17] The Landlord is seeking to keep the Tenant's security deposit, including interest, and additional compensation for rent owing and rental income losses, in the total amount of \$3,539.28, calculated as follows:

Prorated rent for February 2025 (19th to 28th):	\$284.28¹
Rent for March 2025:	\$796.00
<u>Rental income loss for three other rental units:</u>	<u>\$2,459.00</u>
Total amount:	\$3,539.28

Rent Owing – February & March 2025

- [18] The Landlord claims that despite the parties not signing a written tenancy agreement, the parties entered into an oral tenancy agreement. The Landlord stated that the parties would have signed the written tenancy agreement eventually. The Landlord stated that the parties reached an agreement, where the security deposit was paid, rent was disclosed, the Unit was cleaned, furniture was purchased and a move-in date of March 1, 2025 was accepted.
- [19] The Landlord stated that the Tenant gave insufficient notice and that he is seeking to keep the Tenant's security deposit, including interest, for the lost rent for March 2025. The Landlord stated that he is also seeking the prorated rent from February 19 to 28, 2025 because the parties initially agreed to a February 19, 2025 move-in date.
- [20] The Tenant stated that he lost his job and knew he would not be able to pay rent for the Unit. The Tenant stated that he informed the Landlord immediately of the changes in his circumstances.
- [21] The Tenant stated that he never signed a written tenancy agreement and never received the keys to the Unit. The Tenant disputed owing rent because he never moved into the Unit and there was no agreement on whether the tenancy agreement's term was month-to-month or fixed.
- [22] I have reviewed the parties' evidence. I find that the Landlord has not established a valid claim for rent owing and must return the security deposit, including interest to the Tenant, in the amount of \$799.65².

¹ (10 days divided by 28 days multiplied by \$796.00)

² Accrued Interest: \$3.65 (February 6 to date of Order)

- [23] Sections 13 and 15 of the Act state in part:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant occupies the rental unit.

A landlord shall not

- (a) *require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.*

- [24] In this case, the Landlord accepted payment of the security deposit before providing the Tenant with a copy of the tenancy agreement. The evidence establishes that a written tenancy agreement was never given to the Tenant and the parties never signed a tenancy agreement. The evidence also establishes that there were terms and conditions which the parties were still discussing—e.g., whether it was a fixed or month-to-month term.
- [25] The best practice would have been that the Tenant be provided a copy of the tenancy agreement to review and then the parties sign the tenancy agreement. Then the Tenant would pay the security deposit to the Landlord.
- [26] Further, I note that in Orders LR24-47 and LR25-10, the Island Regulatory and Appeals Commission (the “Commission”) found on similar facts that a landlord had to return a security deposit because the parties did not have a signed written tenancy agreement (see subsection 11(1) of the Act) and the tenants never moved into the rental units. Particularly, in LR25-10 the Commission stated:

“The Commission finds that a tenancy agreement must be in writing and the rights and obligations of a tenancy take effect from the date the tenancy agreement is entered into.”

- [27] In this case, there was no written tenancy agreement. The Tenant never had exclusive access to the Unit and never moved into the Unit. Further, I am not satisfied on the evidence presented that the parties agreed on all of the necessary terms and conditions to satisfy any tenancy agreement (see clauses 1(w) and 11(2) of the Act). Therefore, the rights and obligations of a tenancy never took effect.
- [28] I find this claim is denied. The Landlord must return the security deposit, including interest to the Tenant, in the amount of \$799.65.

Rental Income Loss

- [29] The Landlord is seeking additional compensation for rental income loss for three other rental units in the Residential Property, in the amount of \$2,459.00.
- [30] The Landlord stated that the Tenant has made negative comments / posts on other rental unit advertisements on Facebook. The Landlord stated that due to these negative posts, he is unable to rent three vacant rental units on the Residential Property. The Landlord stated that the negative posts have negatively impacted his rental business. The Landlord stated that the Tenant has harassed prospective tenants.
- [31] The Landlord submitted two advertisements into evidence of other rental units on the Residential Property, which show the Tenant’s comments / posts, which state:

Advertisement 1:

Tenant’s Comments: *“He is hard to deal with, is refusing to give my damage deposit back.”*

Advertisement 2:

Tenant's Comments: *"Be aware of this Landlord...have had issues getting dd back."*

- [32] The Landlord claims one months' rent for three vacant rental units, in the amount of \$2,459.00.³
- [33] The Tenant stated that he made those comments out of anger after the Landlord refused to return his security deposit. The Tenant stated that he has removed the comments / posts from the Facebook advertisements. The Tenant denied harassing prospective tenants. The Tenant stated that he has never personally messaged any prospective tenant and only made those comments / posts on the public viewing advertisement.
- [34] The Tenant stated that it is unreasonable to have to pay the Landlord three months' rent over comments.
- [35] I have reviewed the parties' evidence. I find that the Landlord has not established a valid claim for additional compensation.
- [36] I note that clause 85(1)(d) of the Act allows compensation to a landlord or a tenant for loss suffered or expenses incurred as a result of a contravention of the Act or the tenancy agreement.
- [37] However, for the reasons mentioned above, I have found that the parties did not have a tenancy agreement. Therefore, the parties' rights and obligations of a tenancy never took effect. I find that I cannot award the Landlord compensation for a contravention of the Act or the tenancy agreement because there was no tenancy agreement or rights and obligations required under the Act in these circumstances.
- [38] Further, I do not have the jurisdiction to award the Landlord compensation for the Landlord's claim that the Tenant negatively impacted his business due to negative comments. Such claims fall more closely with defamation or economic loss in tort law.
- [39] I find this claim is denied. The Landlord Application is denied.

B. Must the Landlord compensate the Tenant double the security deposit?

- [40] I find that the Landlord does not have to compensate the Tenant double the security deposit.
- [41] Clause 40(4) of the Act requires double the security deposit be compensated to a tenant if a landlord does not comply with clause 40(1) of the Act. For the reasons above, I have found that there was no tenancy agreement between the parties. Therefore, the rights and obligations of a tenancy did not take effect. Also, I note that the Landlord filed the original application within 15 days.
- [42] Further, in Orders LR24-47 and LR25-10, the Commission in similar facts returned the security deposit, including interest to the tenants but did not order the landlords to have to pay double the security deposit.
- [43] The Tenant Application is allowed in part.

CONCLUSION

- [44] The Landlord Application is denied.
- [45] The Tenant Application is allowed in part. The Landlord must return the Tenant's security deposit, including interest to the Tenant, in the amount of \$799.65 by the timeline below.

³ (\$796.00 plus \$849.00 plus \$814.00)

IT IS THEREFORE ORDERED THAT

1. The Landlord will return the Tenant's security deposit, including interest to the Tenant, in the amount of \$799.65 by May 14, 2025.

DATED at Charlottetown, Prince Edward Island, this 14th day of April, 2025.

(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.