

INTRODUCTION

- [1] The Subtenant seeks the return of the security deposit, in the amount of \$650.00.

DISPOSITION

- [2] The Tenant must return the Subtenant's security deposit to the Subtenant.

BACKGROUND

- [3] The Unit is a single room with shared services and facilities located in a three-bedroom and one-bathroom, single-family dwelling (the "Residential Property").
- [4] On August 5, 2024 the parties entered into an oral, month-to-month subletting agreement for the Unit. The Subtenant paid the Tenant a \$650.00 security deposit. Rent in the amount of \$650.00 was due on the first day of the month. The Subtenant, the Tenant and another party occupied the Residential Property.
- [5] On December 31, 2024 the Subtenant vacated the Unit. The details regarding the end of the subtenancy are discussed below.
- [6] On January 17, 2025 the Subtenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking the return of the security deposit. On January 19, 2025 the Subtenant emailed the Application to the Tenant.
- [7] On March 19, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for April 24, 2025, along with a copy of the Application.
- [8] On April 17, 2025 the Rental Office emailed the parties a 13-page evidence package. The Rental Office telephoned the Tenant and left a voicemail message with the teleconference hearing details and a reminder to review the evidence package emailed to the Tenant.
- [9] On April 24, 2025 at 9:00 a.m. the Subtenant joined the teleconference hearing for determination of the Application. The Tenant did not join the teleconference hearing. I telephoned the Tenant and left a voicemail message with the teleconference information and the Rental Office's telephone number. The Subtenant confirmed that all documents he submitted to the Rental Office were included in the evidence package. The teleconference hearing proceeded at 9:10 a.m. in the Tenant's absence.

ISSUE

- A. Must the Tenant return the Subtenant's security deposit?

ANALYSIS & FINDINGS

- [10] The Subtenant is seeking the return of his security deposit.
- [11] The Subtenant stated that he asked the Tenant for a written subletting agreement throughout the subtenancy. The Subtenant stated that in December 2024, the Tenant gave him a written tenancy agreement with his name included. The Subtenant stated that he never signed this tenancy agreement and denied being in a tenancy agreement with the Residential Property's owner. The Subtenant submitted the written tenancy agreement into evidence.
- [12] The Subtenant stated that in November 2024, he had an oral conversation with the Tenant regarding leaving the Unit once his wife's visa was approved. The Subtenant stated that on December 5, 2024, he told the Tenant that he was going to vacate the Unit on December 31, 2024.

- [13] The Subtenant submitted a text message conversation with the Tenant into evidence, summarized as follows: The Tenant felt it was unfair that the Subtenant only gave three weeks' notice, but wanted the Subtenant out of the Unit by January 1, 2025. The Tenant stated that he "posted" an advertisement of the Unit and would return the security deposit once someone was found to move into the Unit.
- [14] The Subtenant stated that he was unsure if the Tenant found someone to rent the Unit for January 2025. The Subtenant stated that the Tenant did not return his security deposit and did not give him an application from the Rental Office.
- [15] I have reviewed the evidence submitted by the Subtenant.

The end of the subletting agreement

- [16] I find that the subletting agreement ended on December 31, 2024, by mutual agreement. The evidence establishes that the Tenant accepted the Subtenant's notice to vacate on December 31, 2024. The Tenant advertised the Unit and requested that the Subtenant be out by January 1, 2025.

The security deposit

- [17] Section 40 of the *Residential Tenancy Act* (or 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.*
- [18] However, I note that the parties were in a subletting agreement. In Order LR24-72 the Island Regulatory and Appeals Commission made the following comment regarding subletting agreements at paragraph 24, stating:
- "In cases where the original tenant continues to occupy the rental unit with the subtenant(s), the original tenant is not considered a "landlord" of the subtenant per the definition in the Residential Tenancy Act because the definition of "landlord", found at subsection 1(h), expressly excludes "a tenant occupying the rental unit"."*
- [19] I find that the evidence establishes that the subletting agreement ended on December 31, 2024 by mutual agreement. The Tenant did not file an application to keep the security deposit and/or seek compensation. I find that the Subtenant has established a valid claim and the Tenant must return the Subtenant's security deposit.
- [20] I note that the Subtenant is not seeking compensation for double the security deposit and that because the Tenant is not considered a "landlord" subsection 40(4) does not apply to the Tenant in this case.
- [21] Further, subsection 14(9) of the Act only requires a "landlord" to credit security deposit interest to a tenant. As the Tenant is not a "landlord," the Subtenant has not been credited with security deposit interest in this decision.
- [22] The Application is allowed. The Tenant must return the Subtenant's security deposit by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The Tenant must pay the Subtenant \$650.00 by May 23, 2025.

DATED at Charlottetown, Prince Edward Island, this 24th 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.