



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: January 24, 2024

Docket: LR23117

Type: Rental Appeal

INDEXED AS: Darren Blanchard v. Jeffery Lee

Order No: LR24-02

BETWEEN:

Darren Blanchard

Appellant

AND:

Jeffery Lee

Respondent

ORDER

Panel Members:

M. Douglas Clow, Vice-Chair
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Corporate Services and Appeals

1. INTRODUCTION

1. This appeal was heard by the Commission on January 16, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a landlord is responsible to return double security deposit to the Tenant.

2. BACKGROUND

2. The Landlord and Tenant were parties to a verbal tenancy agreement, entered into in late August 2023, with respect to a rental unit located at 171 New Glasgow Road, North Milton, PEI. The rental unit was a room in a larger residential property. The tenancy agreement was to begin on September 4, 2023. Rent was agreed to at \$800/month with a security deposit in the amount of \$800. The Tenant made a payment of \$1000 to the Landlord on August 31, 2023. These facts will be discussed in more detail below.
3. On or about September 5, 2023, the Tenant advised the Landlord that, because of transportation issues from New Glasgow to Charlottetown, he would no longer be staying in the rental unit, and asked for his \$1000 to be returned. The Landlord refused.
4. Discussions between the parties broke down, and the Tenant eventually filed a Form 2(A) Tenant Application to Determine Dispute with the Residential Tenancy Office on September 26, 2023, seeking the return of his security deposit and rent.
5. A hearing was held before the Residential Tenancy Office on November 21, 2023, and Order LD23-563 was issued on December 1, 2023. Order LD23-563 found that Tenant was not entitled to a return of rent, but that the Landlord did not comply with section 40 the *Residential Tenancy Act* in respect of his claim against the security deposit, and therefore, the Tenant was entitled to double the amount of the security deposit in accordance with clause 40(4)(b) of the *Act*.
6. The Landlord appealed Order LD23-563 on December 19, 2023.
7. The Commission heard the appeal on January 16, 2024, by way of telephone conference call. The Landlord participated. The Tenant also participated and called one witness, Abdul Jalal.

3. DISPOSITION

8. The Commission dismisses the appeal. Order LD23-563 is upheld, though the Commission makes a different finding about the date the tenancy ended between the parties.

4. ANALYSIS

Preliminary Matter

9. In his Notice of Appeal, the Landlord raised that Order LD23-563 was issued using his personal name rather than the name of his non-profit company, Islanders Helping

Islanders. The Landlord indicates that he is “owner and acting director” of the non-profit. At the hearing, the Landlord testified that he owns the residential property in his personal name, but that it is leased to his non-profit, and it is the non-profit that leases to tenants.

10. The *Residential Tenancy Act* defines “landlord” as including the “owner of the rental unit”. Mr. Blanchard is the owner.
11. Therefore, the Commission agrees in this case that Mr. Blanchard is correctly named as the Landlord in Order LD23-563.

Landlord’s Evidence

12. The Landlord testified that the parties entered into a verbal tenancy agreement on August 28, 2023, after the Tenant’s previous rental agreement with another landlord fell through at the last minute. The parties had previously been acquainted with one another because the Tenant had visited PEI in the summer with his family and stayed at the residential property, which was being rented as an Airbnb at that time.
13. The Landlord said that he asked the Tenant to pay the security deposit of \$800 and the first month’s rent of \$800 to “solidify” the room. The Landlord also testified that the Tenant was presented with a copy of a tenancy agreement, but it was not signed.
14. The Landlord testified that the Tenant paid him \$1000 cash on or shortly after the day the parties verbally agreed to the tenancy. The Landlord did not provide the Tenant with a receipt. At the hearing, the Landlord said that of the \$1000 paid by the Tenant, \$800 was allocated to rent, while \$200 was allocated to the security deposit. The Landlord testified that he never received the outstanding amount of \$600 from the Tenant. However, he did state that he agreed the Tenant could work off some or all of the balance.
15. The Landlord testified that the Tenant moved into the room (rental unit) on September 3, 2023, and was originally planning to stay for the entire school year. However, a day or two after moving in, the Tenant gave notice to the Landlord that he would not be staying at the residential property because of transportation issues between New Glasgow and Charlottetown.
16. The Landlord testified that when the Tenant asked for his \$1000 back after advising he found another rental, the Landlord refused to return the money because the Tenant had broken the lease. The Landlord said that after that point, the relationship between the parties broke down and became “toxic”. He also said at the appeal hearing that he knew keeping the money for the security deposit was wrong, but he kept it to make a point because of how aggressive the Tenant was when he left.
17. The Landlord testified that he re-rented the Tenant’s room on October 1, 2023.
18. Finally, the Landlord testified that based on his experience as a Landlord, he had no idea about the change in legislation and timelines for filing applications with respect to security deposits and he asked for leniency in that regard.

Tenant's Evidence

19. The Tenant testified that he was moving to PEI for work. He had previously stayed at the residential property as an Airbnb when he visited PEI in the summer. Then, in late August 2023, the Tenant's previous rental arrangement fell through, and he and the Landlord verbally agreed that the Tenant would rent a room from the Landlord.
20. The Tenant testified that on August 28, the Landlord asked him for the security deposit and one month rent to hold the room. The Tenant told the Landlord he only had \$1000, and the Landlord told him he needed the security deposit to hold the room because he had 6 other people interested.
21. The Tenant testified that he gave the Landlord \$1000 cash on August 31, 2023. The Tenant was clear that of the \$1000 he paid to the Landlord, \$800 was for the security deposit to hold the room, and \$200 was for a portion of the rent. The Tenant's witness, Abdul Jalal, agreed that the Tenant paid the Landlord \$1000 cash. When asked by the Tenant, Mr. Jalal agreed that the Landlord said to the Tenant "alright, as long as you have the "rent money" by September 4th".
22. The Tenant confirmed that he did not give the Landlord any more money. He said he did not give the Landlord the rest of first month's rent because he did not ever see a tenancy agreement.
23. The Tenant testified that he quickly realized he would not be able to get to and from work in Charlottetown from the residential property because of the bus schedule, and so he found other accommodations. He advised the Landlord of this over messaging. The Tenant also testified that after telling the Landlord he would not be staying in the room, he came back to the property to find all of his belongings out in the yard.
24. The Tenant was adamant throughout his testimony that the Landlord never gave him a written tenancy agreement to sign. When the Landlord asked the Tenant why he would give him \$1000 cash without a lease to sign, the Tenant responded that the Landlord told him if he did not pay the security deposit, he was going to give the room to someone else.

Commission's Findings

25. Order LD23-563 dealt with two issues. First, the Officer found that the parties had entered into a verbal month-to-month tenancy agreement for a room in the residential property. The Commission agrees with this finding. With respect to the Tenant's request for return of rent, the Officer found that the Tenant did not provide proper notice to the Landlord in accordance with the *Residential Tenancy Act* when he decided not to rent the room, and therefore, the Tenant was not entitled to a return of rent for the month of September 2023. This matter was not the subject of the Landlord's appeal to the Commission and the parties did not make submissions on this point. Nevertheless, in the circumstances of this case, the Commission agrees with this finding.
26. Second, Order LD23-563 found that the Tenant was entitled to a return of the security deposit and interest. The Officer was satisfied the evidence established that the Tenant had paid a security deposit in the amount of \$800, and that the Landlord had not made application to retain the security deposit within 15-days of the end of the tenancy as required by section 40 of the *Residential Tenancy Act*. Therefore, the Landlord was

required to repay the Tenant double the amount of the security deposit pursuant to subsection 40(4) of the Act. It was this second issue that was the primary focus of the Landlord's appeal.

27. The Officer found that while the evidence does not provide much clarity around when the tenancy ended, the parties effectively agreed to a month-to-month tenancy beginning September 4, 2023. Rent would normally be due on the first day of the month. He found that, even though the Tenant did not give sufficient notice to end the tenancy such that he was entitled to a return of rent for September, the Landlord agreed he would only hold the Tenant to a "1-month commitment" after the Tenant gave notice. On this basis, the Officer found that the tenancy between the parties ended on September 30, 2023. Therefore, the Officer concluded that the Landlord had until October 15, 2023, to make application to the Director of Residential Tenancy to claim against the security deposit. The Commission comes to a different conclusion on this matter.

28. The Commission finds that the tenancy between the parties ended on September 5, 2023. The text messages between the parties in the evidence before the Commission demonstrate that when the Tenant notified the Landlord he would not be staying in the rental unit and requested his money back, after some messages were exchanged between the parties, the Landlord said:

...Based on your actions and behavior, you are not welcome back to this property. You have stated you have vacated the premises and your coach has been witness. If you show up here, for any reason, the police will be called based on this situation that took place last night when you demanded your money and didn't get it because of the agreement.

29. Further, the testimony of the Tenant was clear that the Landlord removed the Tenant's belongings from the room that evening and put them outside the house. The Landlord did not dispute this testimony.

30. On this basis, the Commission finds the tenancy between the parties ended on September 5, 2023.

31. The Landlord had 15 days from the date the tenancy ended, or until September 20, 2023, to make an application to the Director claiming against the security deposit. The Landlord did not file an application with the Director by this date. The exemptions found at subsections 40(2) and 40(3) do not apply in this case. In Order LR23-76, the Commission previously commented that the language of section 40(4) is non-discretionary. Both the Commission and the Rental Office are administrative bodies created by statute and are bound to apply the legislation as written. Because the Landlord failed to comply with the requirements of the *Residential Tenancy Act* and did not file an application with the Residential Tenancy Office to make a claim against the security deposit within 15 days, the consequences set out in subsection 40(4) apply.

32. The Commission, therefore, agrees with the findings of the Officer that the Landlord is required to repay the Tenant double the amount of the security deposit. However, based on the evidence and submissions made to the Commission on this appeal, we must determine what amount the Tenant paid to the Landlord as "security deposit" versus "rent."

33. As outlined above in the summary of evidence from the parties, the parties are agreed that on or about August 31, 2023, the Tenant gave the Landlord \$1000 cash. Some of that money was allocated to “security deposit” and the remaining amount was allocated to “rent”. However, the parties disagree about that allocation.
34. At the appeal hearing, the Landlord asserted that \$200 was for the security deposit while \$800 was for September’s rent. The Tenant maintains the opposite, that \$800 was for the security deposit to “hold the room”, while \$200 was for a portion of rent. In addition to the parties’ testimony at the hearing, the evidence before the Commission also includes text message conversations between the parties and a written submission prepared by the Landlord prior to the hearing before the Residential Tenancy Office.
35. Based on a review of all of the evidence before the Commission, for the following reasons the Commission finds that the allocation of the payment from the Tenant to the Landlord was \$800 for security deposit and \$200 for rent:
- a. The text messages between the parties are somewhat contradictory. On August 31, the Landlord suggested the Tenant pay “first month’s rent and half the security deposit”. Later that night, the Tenant messaged the Landlord to confirm he paid \$1000. On September 5, after the Tenant messaged to say he would not be renting the room, the Landlord says:

...You are the one breaking the agreement not me. That is exactly why people are asked for the security deposit.

[...]

Everyone pays a security deposit before moving in to secure their spot.

The Landlord goes on to say he gave the Tenant a break “to work off the 400 of the 1st months rent”. On the whole, the text messages suggest that the payment was allocated primarily to the security deposit with only a portion of the rent being paid.

- b. A written statement submitted by the Landlord prior to the hearing before the Rental Officer characterizes the payment as \$800 for security deposit and \$200 for rent:

He paid me \$1000 cash which was to accommodate \$200 for the days he stayed from the 25 to the 4th (which was 4 days past our agreed time as he was to be in the other place...and I never charged him) and the **\$800 security deposit**, and was going to give me the balance when he got the money from the other landlord. But then he made up some excuse as to why it wasn't going to happen...so we **worked out a cleaning schedule to get a break on the rent**...but he still owed some money which would hopefully be worked down. This is all detailed in the various communications on Whats app and text and email as well as verbal.

Then on Sunday, Sept. 3rd, there was an issue that the bus only ran at 7am and 4pm which didn't work for any of the students or Mr. Lee. So on Tuesday, we all (students and I) met, Mr. Lee was not there but communicated he was moving out and wanted his money. The students stated they were also moving out. They also asked for their money back, but they had only paid their damage deposit and not the first month's rent at that time. So, I **explained that they lost their damage deposit, but if they had already paid rent on the first, I would have prorated and refunded the balance.**

[bold emphasis added]

- c. Order LD23-563 states that the Landlord testified at that hearing that he received \$800 for the security deposit and \$200 which covered part of the rent, and that he kept the security deposit to cover the rent owed for September 2023. This tends to confirm that, at that time, the Landlord characterized the payment as being allocated with \$800 for the security deposit.
 - d. The Tenant's witness, Mr. Jalal, corroborated the testimony of the Tenant when he agreed that it was his understanding the Tenant had paid \$800 for the security deposit to hold the room, and \$200 toward his first month's rent.
36. The Commission notes that the testimony and position of the Landlord appears to have changed at the appeal hearing. But the remainder of the evidence does not support that position.
37. Based on the above, the Commission finds that on the whole of the evidence presented, including both the documentary evidence and the testimony of the parties, the \$1000 payment by the Tenant was allocated as \$800 towards the security deposit and only \$200 toward rent for September.

5. CONCLUSION

38. The Commission dismisses the appeal. Order LD23-563 is upheld, though the Commission made a different finding about the date the tenancy ended between the parties.
39. The Landlord shall pay the Tenant double the amount of the security deposit, with interest on the original deposit amount from August 31, 2023, to the date of this Order, being January 24, 2024, in a total amount of:

Security deposit paid:	\$800.00
Interest (August 31, 2023, to January 24, 2024):	\$7.92
Security deposit (double award):	<u>\$800.00</u>
Total compensation awarded:	\$1607.92

IT IS ORDERED THAT

1. The appeal is dismissed.
2. The Landlord shall pay to the Tenant \$1607.92 on or before January 31, 2024.

DATED at Charlottetown, Prince Edward Island, January 24, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Murray MacPherson)

Murray MacPherson, Commissioner

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.