



Date Issued: August 28, 2023
Docket: LR23062
Type: Rental Appeal

INDEXED AS: Shawna Sheridan v. Tanesia Pike
Order No: LR23-45

BETWEEN:

Shawna Sheridan

Appellant

AND:

Tanesia Pike

Respondent

ORDER

Panel Members:

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

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

1. INTRODUCTION

1. This appeal was heard by the Commission on August 23, 2023, and asks the Commission to determine whether the Director of Residential Rental Property (the “Director”) erred in finding that the balance of a security deposit be returned to a Tenant.

2. BACKGROUND

2. In or about August 2022, Shawna Sheridan (the “Landlord”) entered into a written fixed term rental agreement for a room in a shared three-bedroom house located at 40 Centennial Drive, Charlottetown, PE (the “Premises”) with Tanesia Pike (the “Tenant”). The term was for the period August 29, 2022 to December 23, 2022. Rent for the Premises was \$850 per month. The Tenant paid a security deposit in the amount of \$850.
3. The Tenant vacated the Premises on December 23, 2022.
4. On January 20, 2023, the Tenant filed with the Director a Form 9 (“the “Application”) requesting a determination of security deposit. The Tenant claimed the Landlord collected an improper cleaning fee from the security deposit.
5. On March 20, 2023, the Tenant filed with the Director a Form 2, seeking enforcement of conditions of the rental agreement. The Form states that the Landlord deducted a cleaning fee of \$100/month from the security deposit.
6. On April 6, 2023, the Landlord filed with the Director of a Form 8 (the “Notice”) seeking to retain a portion of the security deposit. The Form 8 was dated December 23, 2022.
7. In Order LR23-321 dated July 14, 2023, the Director ordered that the Landlord return the withheld \$400 to the Tenant and that payment be made after the expiration of the appropriate appeal period.
8. On August 2, 2023, the Landlord filed an appeal with the Commission.
9. As this matter commenced prior to April 8, 2023, the *Residential Rental Property Act* (the “RRPA”) applies to this appeal.
10. The Commission heard the appeal by way of telephone conference call on August 23, 2023. The Landlord and the Tenant both participated.

3. DISPOSITION

11. The Commission dismisses the appeal and confirms Order LR23-321.

4. ANALYSIS

12. As a preliminary matter the Landlord disputed the identity of the Tenant at the hearing, claiming that someone was impersonating her. The Commission notes that the Tenant, as part of her affirmation, affirmed that she was Tanesia Pike. Based on this affirmation, the Commission accepts that it was the Tenant herself who participated in the hearing.
13. The specific issue in this matter is whether the Landlord was permitted to retain \$400 from the security deposit as a cleaning fee of \$100 per month for the four-month term of the rental agreement.
14. The rental agreement between the parties provided for a cleaning fee to be paid out of the “damage deposit”. The exact wording reads:
 - a. ** \$400 from the damage deposit will be retained for cleaning of the bathroom and bed sheets 4 X \$100.00 + \$55.90 for rent for August 30rd and 31st will also be deducted from the security deposit. The Landlord will clean the bathroom **except the toilet** 27 of the month. September 27, 2022, October 27, 2022, November 27, 2022 and December 27, 2022 or earlier in December. Tanesia is expected to keep her room clean and tidy at all times. The shower and washer/dryer are shared. Toilet and sink are the tenants to use only.
 - b. **A security deposit in the amount of \$ 850.00 will be paid by the lessee to the Lessor for one month's rent.**

[Emphasis in original]
15. Documentary evidence was submitted by both parties. Much of the evidence consisted of emails between the Tenant and Landlord. Both parties also submitted some photographs of the Premises. At the hearing, both parties testified at length.
16. The Landlord’s primary argument was that the legislation does not prohibit her from charging a cleaning fee and deducting that fee from the security deposit.
17. The Commission disagrees.
18. The RRPA defines “security deposit” as meaning money paid by a Tenant to be held by the Landlord as security for the performance of an obligation or the payment of a liability of the Tenant (s. 1(r)).
19. Section 10 of the RRPA deals with security deposits more specifically. Subsection 10(1) limits the amount of the security deposit to, in this case, a maximum of one month’s rent. Subsection 10(2), subject to subsection 10(5) requires the security deposit to be held in trust. Subsection 10(3) requires a lessor to credit interest to the lessee. Subsection 10(4), subject to subsection 10(5), requires the security deposit to be returned to the lessee within ten days of the date the lessee delivers up possession of the residential premises.

20. Subsection 10(5) reads, in full:

The lessor may retain all or part of a security deposit and interest thereon where he believes the lessee is liable to the lessor for damage to the residential premises caused by a breach of statutory condition 4, or for outstanding rent, provided that the lessor, within ten days of the date on which the lessee delivers up possession of the residential premises or such longer period as the Director may permit, serves the lessee with a notice of intention to retain security deposit in the form prescribed by regulation.

21. The RRPA is clear that a security deposit is to be held in trust and is expected to be returned to a lessee, subject to two exceptions: damage to the residential premises caused by a breach of statutory condition 4 and outstanding rent.

22. In this case, the rental agreement expressly states that “\$400 from the damage deposit will be retained for cleaning”. The evidence of the Landlord serves to support that this is why the \$400 was retained. The Commission finds that this is not an amount that can be properly retained by a landlord from a security deposit.

23. Further, the Commission notes subsection 9(4) of the Act, which states:

In addition to the statutory conditions, a lessor and lessee may provide in a rental agreement for other benefits and obligations that do not conflict with this Act or the provisions of the standard form.

[Emphasis added]

24. The retention of a cleaning fee from the security deposit represents neither damage nor outstanding rent, and accordingly, that provision of the rental agreement conflicts with subsection 10(5) of the RRPA.

25. For the reasons stated above, the Landlord cannot retain a portion of the security deposit for a monthly cleaning fee. The Commission, therefore, agrees with the finding of the Rental Officer in Order LD23-321.

26. However, the Commission does wish to vary Order LD23-321 slightly. Subsection 10(3) of the RRPA provides that a landlord shall credit interest to the tenant on the value of the security deposit during the time it is held by the landlord.

27. In this case, the Landlord returned part of the security deposit on December 23, 2022. In 2022, the allowable interest rate payable on security deposits was 0%. Therefore, no interest was due on that amount. However, the allowable rate for 2023 is 2.5%, and pursuant to subsection 10(3), the Commission orders that the withheld \$400 be returned to the Tenant with interest in the amount of \$6.58.

5. CONCLUSION

28. For these reasons, the Commission dismisses the appeal and confirms Order LD23-321, subject to a variation requiring the Landlord to return the withheld security deposit with interest.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. The Landlord shall pay the amount of \$406.58 to the Tenant within 15 days of this Order.
3. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, Monday, August 28, 2023.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Murray MacPherson)

Murray MacPherson, Commissioner

NOTICE

Subsections 26(2), 26(3), 26(4) and 26(5) of the *Rental of Residential Property Act* provides as follows:

26. (2) A lessor or lessee may, within fifteen days of the decision of the Commission, appeal to the court on a question of law only.
- (3) The rules of court governing appeals apply to an appeal under subsection (2).
- (4) Where the Commission has confirmed, reversed, or varied an order of the Director and no appeal has been taken within the time specified in subsection (2), the lessor or lessee may file the order in the court.

(5) Where an order is filed pursuant to subsection (4), it may be enforced as if it were an order of the court.