



Date Issued: October 5, 2023
Docket: LR23073
Type: Rental Appeal

INDEXED AS: Junshi Dong v. Wenqing Zhu
Order No: LR23-54

BETWEEN:

Junshi Dong

Appellant

AND:

Wenqing Zhu

Respondent

ORDER

Panel Members:

Douglas M. Clow, Vice-Chair
Kerri Carpenter, 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 September 28, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a landlord must return double the security deposit to a tenant.

2. BACKGROUND

2. On December 15, 2022, Junshi Dong (the “Landlord”), entered into a written fixed-term rental agreement for a room in a house located at 193 Mount Edward Road, Charlottetown, PE (the “Premises”) with Wenqing Zhu (the “Tenant”). Rent for the Premises was \$650 per month with a security deposit required and paid in the same amount. The Tenant vacated the Premises on April 29, 2023.
3. On May 16, 2023, the Tenant filed with the Rental Office an application to determine dispute (the “Application”) requesting the return of the security deposit.
4. In Order LD23-394 the Rental Office found that the Landlord had not filed an application with the Rental Office to retain the security deposit as required by section 40.(1) of the *Residential Tenancy Act* (the “Act”) and therefore ordered the Landlord to pay the Tenant double the security deposit in the amount of \$1,300 on or before September 18, 2023.
5. The Landlord filed an appeal with the Commission.
6. The Commission heard the appeal on September 28, 2023, by way of telephone conference call. The Landlord was represented by Hong Li (“Ms. Li”). Ms. Li was assisted by Hong Xu (“Mr. Xu”) who provided translation services and also testified. The Tenant also participated and presented two witnesses: Kaiwen Fu (“Mr. Fu”) and Zeyu Liu (“Mr. Liu”).

3. DISPOSITION

7. The Commission dismisses the appeal and confirms Order LD23-394.

4. ANALYSIS

8. Ms. Li stated that she visited the Rental Office on May 1, 2023. It is her position that she received the wrong information from a Rental Office officer and therefore her failure to file a Form 2B was not her fault. She pointed to the fact that on May 1, 2023 she saw the same officer and did file a Form 2B for another matter, specifically another tenant of 193 Mount Edward Road. Ms. Li testified that it was not until April 4, 2023 that the Tenant told her she was moving out at the end of April 2023. Ms. Li stated that she wished to keep the security deposit as the tenant had not paid the rent for May 2023. Ms. Li testified that the room was still unrented as the damage had not been repaired.

9. Mr. Xu testified that he helped Ms. Li with two rental matters at the Rental Office on May 1, 2023. He stated that they filled out a form for another matter. He also testified that he was present for a conversation between Ms. Li and the Tenant where Ms. Li informed the Tenant that she could leave the room one month early but she must pay the rent for May 2023. He noted Ms. Li gave the Tenant the option of finding a new tenant. He added that Ms. Li never said that the Tenant could just move out one month early and not pay rent for that month.
10. The Tenant testified that she and others met with Ms. Li on March 17, 2023. The Tenant testified that Ms. Li stated that the Tenant could just move out and Ms. Li would keep the deposit as rent. The Tenant testified that Ms. Li stated that the Tenant could find another tenant for the room. The Tenant testified that on April 10, 2023 Ms. Li informed her that she was selling the house so the Tenant did not have to find a new tenant. The Tenant testified that she had identified a new tenant, known as LBJ, on April 9, 2023.
11. Mr. Fu testified that he was another tenant at the house. All the tenants met with Ms. Li on March 17, 2023. He stated that Ms. Li said they could move with no additional rent.
12. Mr. Liu testified that he also was a tenant at the house. He explained there were 4 tenants. He stated that 3 of the 4 tenants were leaving as of the end of April 2023 while the fourth tenant was staying until May 2023.
13. There is no evidence before the Commission that the Tenant followed the process for terminating a fixed term tenancy set out in subsection 55.(3). Accordingly, the Commission agrees with the Rental Office that the tenancy agreement ended on May 31, 2023.
14. The Landlord seeks to retain the security deposit to cover the rent for May 2023. However, the Act sets out a very specific and precise process which must be followed for a landlord to retain the security deposit. Subsections 40.(1),(2), (3) and (4) set out that process. Subsection 40.(1) is the general requirement. Subsections 40.(2) and (3) set out circumstances where the security deposit may be retained by a landlord. Subsection 40.(4) sets out the consequences of non-compliance. These subsections read:

40. Return of security deposit

(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.

Landlord may retain amount from 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.

Retention by landlord, other circumstances

(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.

Consequences of non-compliance

(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 Commission finds that the Act does not give the Director or the Commission the authority any discretion to waive or to temper the consequences of non-compliance set out in subsection 40.(4).
16. Section 110. of the Act makes it clear that a security deposit held in accordance with the former Act is deemed to be held in accordance with the Act and the provisions of the Act respecting security deposits apply.
17. In the present case, Ms. Li alleges that she got the wrong information from the Rental Office and thus the fact that she did not file an application under subsection 40.(1)(b) is not her fault. While it is possible Ms. Li may have not received the correct information, perhaps due to a communications issue, subsection 40.(4) is mandatory. The Landlord not comply with section 40. Of the Act, and therefore no claim can be made against the security deposit and the Landlord must pay the Tenant double the amount of the security deposit.
18. With respect to payment for rent for the month of May 2023, the Landlord may wish to contact the Rental Office about a possible application for a remedy. The Landlord should be mindful of section 75. of the Act, including that an application must be made within six months of the termination of the tenancy agreement.
19. For the above reasons, the Commission agrees with the reasoning and findings set out in Order LD23-394.

5. CONCLUSION

20. The Commission agrees with the reasoning and findings set out in Order LD23-394, said Order is confirmed and the appeal is dismissed.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD23-394 is confirmed.

DATED at Charlottetown, Prince Edward Island, Thursday, October 5, 2023.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Kerri Carpenter)

Kerri Carpenter, 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.