



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: November 1, 2023

Docket: LR23080

Type: Rental Appeal

INDEXED AS: Guanting Tong v. Palwinder Singh, Rupinder Singh and Satpal Singh

Order No: LR23-63

BETWEEN:

Guanting Tong

Appellant

AND:

Palwinder Singh, Rupinder Singh and Satpal Singh

Respondents

ORDER

Panel Members:

Kerri Carpenter, Commissioner
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 filed with the Commission on September 20, 2023, and asked the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that three tenants are entitled to recovery of overpayment of their security deposits and that one of the tenants is entitled to receive the return of their security deposit.

2. BACKGROUND

2. Guanting Tong (the "Appellant") is a tenant under a tenancy agreement with the Residential Property owner (the "Owner") of premises located at 154 Mason Road, Stratford, PE (the "Premises"). The Owner is not a party to this appeal. The Appellant sublets rooms in the Premises. The Appellant, as a landlord, entered into three separate tenancy agreements for rooms in the Premises as follows:

- a. Palwinder Singh ("P.S.") entered into a written fixed term agreement with the Appellant for the period July 1, 2023 to June 30, 2024. Rent was \$1000 per month with a security deposit of \$2,000 required and paid. P.S. vacated the Premises on July 31, 2023;
- b. Rupinder Singh ("R.S.") entered into a written fixed term agreement with the Appellant for the period June 1, 2023 to May 31, 2024. Rent was \$1000 per month with a security deposit of \$2,000 required and paid. R.S. vacated the Premises on August 31, 2023; and
- c. Satpal Singh ("S.S.") entered into a written fixed term agreement with the Appellant for the period June 1, 2023 to May 31, 2024. Rent was \$1200 per month with a security deposit of \$1,800 required and paid. S.S. vacated the Premises on August 31, 2023.

P.S., R.S. and S.S. are collectively referred to as the "Respondents".

3. On July 17, 2023 and August 16, 2023 each of the Respondents filed with the Rental Office an application to determine dispute (the "Applications"):
 - a. P.S. filed for return of his security deposit and overpayment of the security deposit;
 - b. R.S. filed for overpayment of the security deposit; and
 - c. S.S. filed for overpayment of the security deposit.
4. In Order LD23-430 the Rental Office found that:
 - a. the Appellant did not file an application with the Rental Office to retain P.S.'s security deposit as required by section 40.(1) of the *Residential Tenancy Act* (the "Act") and ordered that the Appellant to pay P.S. double the security deposit in the amount of \$2,000; and

- b. the Appellant was in contravention of section 5 of the *Act* and therefore ordered to pay:
 - i. \$1,000 to P.S. representing overpayment of the security deposit;
 - ii. \$1,000 to R.S. representing overpayment of the security deposit; and
 - iii. \$600 to S.S. representing overpayment of the security deposit.
5. The Appellant filed an appeal with the Commission.
6. The Commission held a hearing of the appeal on October 12, 2023, by way of telephone conference call. The Appellant represented himself. The Respondents were represented by P.S. and S.S.

3. ANALYSIS

7. The Appellant's testimony centred around alleged water damage to the basement Premises, and to a lesser extent an allegation that the Premises were not cleaned properly. He stated that there were no issues with the basement until the Respondents moved in.
8. The Commission panel then informed the Appellant that there were two key issues for the appeal: i) whether security deposits were sought that exceeded one month's rent; and ii) whether the Appellant filed and served notices to retain the security deposit as required by the *Residential Tenancy Act* ("RTA"). The Appellant acknowledged that he received more than one month's rent for each of the security deposit. The Appellant did not present any compelling arguments in favour of the Commission having any leeway under the legislation to overlook the requirement for a landlord who wants to make a claim against a security deposit to file the notice to retain security deposit as required under the RTA. He simply stated that he was keeping the security deposits because of "damage to my home".
9. P.S. testified that he noticed the water issues downstairs when he first moved in and other tenants informed him not to use the washroom as the bathtub and washing machine were leaking. He was adamant that the water issues were present when he moved in and that he did nothing to cause the issues. He testified that he knew it was illegal to be charged more than one month's rent for a security deposit but he had no place to live so he reluctantly paid.
10. The evidence of the Appellant and Respondent established that all three respondents were overcharged security deposits, in the amounts of \$1,000 (P.S.), \$1,000 (R.S.) and \$600 (S.S.).
11. The Commission notes that the rental agreements signed by the three tenants/Respondents confirm that the tenants were required to pay more than one month's rent as their security deposits, specifically \$2,000 (P.S.), \$2,000 (R.S.), and \$1800 (S.S.). The rental agreements were submitted as Exhibits 14, 15 and 16. In addition, P.S. provided evidence of a June 30, 2023 e-transfer from P.S. to the Appellant in the amount of \$2000.00 which P.S. testified was for the security deposit.

12. There is no evidence that the Appellant served a valid notice to retain security deposit. The legislation is clear in that landlord may not make a claim on the security deposit unless the landlord files the notice to retain security deposit within the required time limits set out in the Act. Therefore, the Commission having found that the notice was not filed, cannot address the issue of any damages that occurred and/or the cause of any such damages to the premises.
13. The Commission finds that the Appellant unlawfully required and accepted security deposits greater than one month's rent for each of the three Respondents. The Commission also finds that the Appellant sought to retain the security deposits.
14. In Order LD23-430 the Rental Office stated:

[19] The Landlord shall pay the Tenants the following amounts:

The Landlord shall pay the Tenant (P.S.) \$1,000.00 for overpayment and double the security deposit in the amount of \$2,000.00 for a total amount of \$3,000.00 forthwith;

The Landlord shall pay the Tenant (R.S.) \$1,000.00 for overpayment of the security deposit forthwith; and

The Landlord shall pay the Tenant (S.S.) \$600.00 for overpayment of the security deposit forthwith.

15. Mindful that the term *Landlord* above refers to the Appellant on appeal and not the Owner, and the terms *Tenant* above refers to the Respondents on appeal, the Commission agrees with all findings made by the Rental Office in Order LD23-430 and confirms that Order.
16. The Commission notes that R.S. and S.S. have now departed the premises. The Commission has not addressed any matters related to the return of their security deposits as that matter has not come before the Commission.

4. DISPOSITION

17. The Commission dismisses the appeal and confirms Order LD23-430.

IT IS ORDERED THAT

- 1. The appeal is dismissed.**
- 2. Order LD23-430 is confirmed.**
- 3. The Appellant Guanting Tong shall pay the following amounts forthwith:**

- \$3000.00 to Palwinder Singh
- \$1000.00 to Rupinder Singh
- \$600.00 to Satpal Singh

4. A certified copy of this Order may be filed with the Court and enforced by Sheriff Services.

DATED at Charlottetown, Prince Edward Island, Wednesday, November 1, 2023.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

(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.