



Date Issued: November 6, 2023
Docket: LR23084
Type: Rental Appeal

INDEXED AS: Kyle Hambly v. Fiston Ngabonziza
Order No: LR23-69

BETWEEN:

Kyle Hambly

Appellant

AND:

Fiston Ngabonziza

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 October 27, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a Landlord must return a Tenant double the security deposit.

2. BACKGROUND

2. On December 23, 2023, Kyle Hambly (the “Landlord”) and Fiston Ngabonziza (the “Tenant”) entered into a written tenancy agreement for the premises located at 562 Malpeque Road, Apartment #303, Charlottetown, PE (the “Premises”). Rent for the Premises was \$2100.00 per month, and the Tenant paid a security deposit of \$2,000.00. The Tenant vacated the Premises on May 31, 2023.
3. The Tenant made repeated requests for return of the security deposit. The Landlord did not advise the Tenant that there was any concern with respect to the state of the Premises, failed to respond to the requests for the return of the security deposit, and did not serve a notice of intention to retain all or part of the security deposit within 15 days of the date of the end of the tenancy.
4. On June 15, 2023, the Tenant filed an Application with the Rental Office seeking a return of the security deposit (the “Application”).
5. On June 21, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) seeking to retain the security deposit.
6. In Order LD23-424 the Rental Office dismissed the Form 2B and allowed the Application and, in accordance with the provisions of the *Residential Tenancy Act*, ordered the Landlord to pay the Tenant double the security deposit in the amount of \$4,000.00 on or before October 11, 2023.
7. The Landlord filed an appeal with the Commission.
8. The Commission heard the appeal on October 27, 2023, by way of telephone conference call. The Landlord and the Tenant both participated.

3. DISPOSITION

9. The appeal is dismissed and Order LD23-424 is confirmed.

4. ANALYSIS

10. The Landlord submitted that the provisions in the Residential Tenancy Act (“the Act”) that require a landlord to pay a tenant double the security deposit do not apply where the tenant did not provide the required notice to terminate the tenancy agreement. The Landlord also stated that the Tenant did not professionally clean the Premises as required by the tenancy agreement.

11. The Tenant stated that he moved out of the Premises on May 31, 2023. He stated that he paid rent in full for the month of May 2023. He acknowledged that the tenancy agreement ran from January 1 to April 30, 2023 after which it became month to month. He acknowledged that it was on May 4, 2023 that he gave the Landlord notice he was moving out at the end of May and thus he did not provide the notice required under the Act. He stated that the Landlord had advised him that a new tenant was found on May 11, 2023. The Tenant testified that he left the Premises clean at the end of May as indicated by the pictures contained in the appeal file.
12. In a text message to the Tenant (see Exhibit E-8, page 32 of the Commission file) the Landlord refers to a Schedule D to the tenancy agreement. The Commission notes that the tenancy agreement on file with the Commission (Exhibit E-6, pages 12 to 14 of the Commission file) does not contain any Schedule D. Both parties were provided a copy of the file for their review two weeks prior to the hearing and they were given the opportunity to file additional evidence no later than October 23, 2023. Accordingly, to the extent there was a missing schedule D, the Landlord had the opportunity to file it with the Commission. The Commission finds that the tenancy agreement in evidence before the Commission makes no mention of any requirement for professional cleaning.
13. The Commission notes that the evidence contains several photographs taken by the Tenant which appear to show that the Premises are very clean and tidy. The Commission notes that there are no photographs from the Landlord showing any areas left unclean.
14. The Landlord's position is that the Tenant breached the notice requirement set out in section 55 of the Act and therefore the return of security deposit provisions set out in section 40 of the Act cannot not be imposed upon the Landlord. Subsections 40(1) through (4) of the Act read:

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.

Emphasis added.

15. Subsections 40(2) and (3) are the only exceptions to the provisions contained in section 40. The Commission finds that there is no exemption from the rigours of section 40 for a Tenant failing to give the required notice.

16. The Commission also would point out section 5 of the Act:

This Act cannot be avoided

*Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.
2022,c.88,s.5.*

17. In the present appeal, the Tenant failed to give the required notice; however, a new tenant was promptly found and thus the Landlord mitigated any damage or loss arising from the tenant's insufficient notice. The evidence before the Commission is that the Premises were left in a clean condition. The text messages reveal that, after moving out of the Premises on May 31, 2023, the Tenant repeatedly sought the return of his security deposit. The Landlord indicated the following on June 6, 2023 at 11:37 a.m. (Exhibit E-8, page 32):

Your deposit will be returned within the 10 day time frame.

18. However, the deposit was not returned within 10 days of the end of the tenancy nor within the correct 15 day period set out in the Act. The Tenant then filed a Form 2(A) dated June 15, 2023 and the Landlord replied with a Form 2(B) on June 21, 2023. However, the Landlord's Form 2(B) was not filed within 15 days of the end of the tenancy.

19. The Commission confirms Order LD23-424. The Tenant is entitled to a return of the security deposit, the Landlord shall not make a claim against the security deposit and the Landlord shall pay the tenant double the amount of the security deposit as a consequence of non-compliance as set out in subsection 40.(4) of the Act.

5. CONCLUSION

20. Order LD23-424 is confirmed. The Landlord shall pay the Tenant double the security deposit in the amount of \$4,000 on or before November 21, 2023.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD23-424 is confirmed.
3. The Landlord shall pay the Tenant the sum of \$4,000.00, representing double the security deposit, on or before November 21, 2023.

DATED at Charlottetown, Prince Edward Island, Monday, November 6, 2023

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Murray MacPherson)

Murray MacPherson

NOTICE

Subsections 89 (9), (10) and (11) of the *pResidential 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