



**Date Issued:** December 13, 2023  
**Docket:** LR23100  
**Type:** Rental Appeal

INDEXED AS: Mark Mullally v. Phil Connor & Kelsey Turner  
Order No: LR23-76

**BETWEEN:**

Mark Mullally

**Appellant**

**AND:**

Phil Connor & Kelsey Turner

**Respondent**

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## ORDER

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Panel Members:

Kerri Carpenter, Commissioner  
M. Douglas Clow, Vice-Chair

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

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Commission Administrator  
Corporate Services and Appeals

## **1. INTRODUCTION**

1. This appeal was heard by the Commission on November 8, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a Landlord must return to the Tenants double the security deposit.

## **2. BACKGROUND**

2. Mark Mullally (the “Landlord”) and Phil Connor and Kelsey Turner (the “Tenants”) entered into a written fixed term tenancy agreement for the premises located at 275 Morrisons Beach Road, Georgetown Royalty, PE (the “Premises”) for the period September 1, 2022 to June 30, 2023. Rent for the Premises was \$2,200.00 per month. The Tenants paid a security deposit of \$2,200.00.
3. The Tenants vacated the Premises on June 30, 2023. The Landlord returned \$998.77 of the security deposit to the Tenants and retained the balance of \$1,201.23.
4. On July 20, 2023, the Tenants filed an Application with the Rental Office seeking a return of the security deposit (the “Application”) as the Landlord had not filed with the Director an application to determine dispute (“Form 2B”) within 15 days of the date of the end of the tenancy, as required by subsection 40(1) of the *Residential Tenancy Act*.
5. According to Order LD23-456, on the date of the hearing before the Rental Office, the Landlord filed a copy of a Notice of Intention to Retain Security Deposit (Form 8) dated July 10, 2023 seeking to retain a portion of the security deposit. This was the form used under the former *Rental of Residential Property Act*.
6. In Order LD23-456 the Rental Office dismissed the Form 8 and allowed the Application and, in accordance with the provisions of the *Residential Tenancy Act*, ordered the Landlord to pay the Tenants double the security deposit in the amount of \$2,402.46 plus accrued interest of \$27.27 on or before October 30, 2023.
7. The Landlord filed an appeal with the Commission.
8. The Commission heard the appeal on November 8, 2023, by way of telephone conference call. The Landlord and one of the Tenants, Phil Connor (“Mr. Connor”), participated.

## **3. DISPOSITION**

9. The appeal is dismissed and Order LD23-456 is confirmed.

## **4. ANALYSIS**

10. The Landlord stated that he had valid reasons for retaining the security deposit, detailing cleaning he felt was required and the replacement of an alleged damaged mattress. He testified that he contacted the Rental Office after the Tenants had filed their Application and that he was not told prior to the issuance of Order LD23-456 that he did not file the

proper paperwork. He stated that he wished he was aware of the current legislation and he operated under the rules he thought applied.

11. Mr. Connor stated that the Tenants had hired and paid for a professional cleaner to clean the Premises. He stated that the Tenants had done a walk through on June 30, 2023 with the Landlord and the Landlord said it was all good and that he would return the deposit once he was paid rent by another tenant. Mr. Connor stated that ten days later the Landlord stated that he would withhold a portion of the security deposit and emailed a Form 8 late that evening.
12. The *Residential Tenancy Act* (“the Act”) became law on April 8, 2023. Section 40 of the new Act governs the return of security deposits and sets the requirements a landlord must follow in order to make a claim against a security deposit.
13. The new RTA imposes a strict 15-day time limit. A landlord is required to either return the security deposit or make an application to the Director claiming against the security deposit, within 15 days after the tenancy ends (subsection 40(1)). Where a landlord does not comply with subsection 40(1), they are prohibited from claiming against the security deposit and must pay the tenant “double the amount of the security deposit” (subsection 40(4)).
14. The policy behind the security deposit provisions in the new RTA appears to be to prevent landlords from withholding money from their tenants for long periods of time without actually making an application to claim against the security deposit. The new RTA puts the onus on a landlord to bring proceedings to prove his or her right to the tenant’s security deposit rather than putting the onus on the tenant to bring proceedings to get the security deposit back.<sup>1</sup>
15. In the present appeal, the Landlord served the Tenants with a Form 8, prescribed under the former *Rental of Residential Property Act*, ten days after the end of the tenancy. However, he did not make application to the Director within 15 days, or at all, as required by the new Act. Instead, the Tenants had to bring the Application that is the subject of this appeal in order settle the issue of the security deposit. It was the Landlord’s failure to follow the provisions of the new RTA and file an application with the Director, not the mere use of the wrong form, which triggered the consequences of subsection 40(4) of the Act.
16. The language of section 40(4) is non-discretionary.<sup>2</sup> Both the Commission and the Rental Office are administrative bodies created by statute and are bound to apply the legislation as written. In this case, the Landlord failed to comply with the requirements of the RTA and did not file an application with the Rental Office to make a claim against the security deposit within 15 days. Therefore, the consequences set out in subsection 40(4) apply.
17. Accordingly, the Commission agrees with the outcome of Order LD23-456 and this appeal is dismissed. The Landlord shall pay the Tenants double the amount of the outstanding security deposit, plus accrued interest on the original (non-doubled) deposit amount:

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<sup>1</sup> *Brown v. British Columbia (Residential Tenancy Branch Tribunal)*, 2010 BCSC 861, at para 27.

<sup>2</sup> *Abboud v. Jung*, 2020 BCSC 736, at para 88.

- Security Deposit Amount ..... \$2,200.00
- Less amount Landlord already returned to the Tenants ..... (\$998.77)
- Amount of Security Deposit outstanding ..... \$1,201.23

18. The amount of the outstanding security deposit, doubled, is \$2,402.46. The accrued interest on the original deposit amount is \$27.27. Therefore, the total amount the Landlord must pay to the Tenants is: **\$2,429.73**.

## 5. CONCLUSION

19. The Landlord failed to comply with the mandatory requirements under section 40 of the Act and, therefore, the Landlord cannot make a claim against the security deposit and shall pay the Tenants a total of \$2,429.73.

## IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Order LD23-456 is confirmed.**
3. **The Landlord shall pay the Tenants the sum of \$2,429.73. Payment is due immediately.**

**DATED** at Charlottetown, Prince Edward Island, Wednesday, December 13, 2023

## BY THE COMMISSION:

(sgd. Kerry Carpenter)

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Kerri Carpenter, Commissioner

(sgd. M. Douglas Clow)

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M. Douglas Clow, Vice-Chair

## 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.