



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: January 24, 2024

Docket: LR23119

Type: Rental Appeal

INDEXED AS: Fouad Haddad v. Tracy Sylvia Watkins

Order No: LR24-01

BETWEEN:

Fouad Haddad

Appellant

AND:

Tracy Sylvia Watkins

Respondents

ORDER

Panel Members:

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

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Corporate Services and Appeals

1. INTRODUCTION

1. This appeal was heard by the Commission on January 17, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a landlord is responsible to return double security deposit to the Tenant.

2. BACKGROUND

2. The Tenant and Landlord entered into a written month-to-month tenancy agreement on January 7, 2021, for the residential premises located at 56 Grafton St, Apt #2. The rental unit is a two-bedroom apartment. On January 18, 2023, the parties entered into a new written month-to-month tenancy agreement for the same residential premises. The latter tenancy agreement indicates that rent is \$1275/month and that a security deposit of \$500 was paid on behalf of the Tenant.
3. The Tenant moved out of the rental unit on October 31, 2023.
4. On November 16, 2023, the Tenant filed a Form 2(A) Tenant Application to Determine Dispute, seeking the return of her security deposit.
5. A hearing was held before the Residential Tenancy Office on December 7, 2023, and Order LD23-582 was issued on December 12, 2023. Order LD23-582 found that the Landlord did not comply with section 40 the *Residential Tenancy Act* in respect of his claim against the security deposit, and therefore, the Tenant was entitled to double the amount of the security deposit in accordance with clause 40(4)(b) of the *Act*.
6. The Landlord appealed Order LD23-582 on December 20, 2023.
7. The Commission heard the appeal on January 17, 2024, by way of telephone conference call. The Landlord participated. The Tenant also participated.

3. DISPOSITION

8. The Commission allows the appeal. Order LD23-582 is reversed.

4. ANALYSIS

9. Order LD23-582 found that the Landlord did not comply with section 40 the *Residential Tenancy Act* in respect of his claim against the security deposit, and therefore, the Tenant was entitled to double the amount of the security deposit in accordance with clause 40(4)(b) of the *Act*.
10. The Landlord’s sole ground of appeal to the Commission was:

I was informed through Ask Rental to file Form 5 as it replaced the older form used to claim repair or damage and no mention to file Form 2(B) along side within the 15 days. I believe the ruling on my case is unfair.

Landlord's Evidence

11. At the hearing, the Landlord testified that he emailed Ask Rental (the Residential Tenancy Office) on November 2, 2023, regarding the proper form for claiming against a security deposit. He testified that he was advised to use the Form 5 and was never told about the Form 2(B).
12. During the hearing, upon hearing this testimony, the Commission Panel requested the Landlord to send the email to the Commission Clerk. Once received, the Commission Clerk then forwarded the email to Tenant and a hard copy was provided to the Commission Panel during the hearing.
13. The email thread reads as follows:

From: [Fouad Haddad]
Sent: Thursday, November 2, 2023 9:52 AM
To: Ask Rental <askrental@peirentaloffice.ca>
Subject: Security Deposit

*Where can I access the forms to account for repairs to an apartment and withhold security deposit?
Can you provide a link?
Fouad Haddad*

On Nov 2, 2023, at 10:14 AM, Ask Rental <askrental@peirentaloffice.ca> wrote:

*Good Morning,
All of the forms are located on our website at this link. <https://peirentaloffice.ca/forms/>
Regards,*

*Residential Tenancy Office
902-368-7878
askrental@peirentaloffice.ca*

From: [Fouad Haddad]
Sent: Thursday, November 2, 2023 10:35 AM
To: Ask Rental <askrental@peirentaloffice.ca>
Subject: Re: Security Deposit

I know the link but which form [sic] is used to claim repairs from the security deposit after the tenant has moved out?

On Nov 2, 2023, at 10:40 AM, Ask Rental <askrental@peirentaloffice.ca> wrote:

*The form your looking for is a form 5- Landland [sic] condition Inspection Report.
Thanks,*

*Residential Tenancy Office
902-368-7878
askrental@peirentaloffice.ca*

On Nov 2, 2023, at 10:56 AM, [Fouad Haddad] wrote:

Thanks

From: [Fouad Haddad]
Sent: Thursday, November 2, 2023 11:01 AM
To: Ask Rental <askrental@peirentaloffice.ca>
Subject: Re: Security Deposit

*Can I still use the older form to indicate the cost of repairs and
deposit placed or just indicate that on this form?
Fouad*

From: Ask Rental <askrental@peirentaloffice.ca>
Date: November 2, 2023 at 11:02:21 AM ADT
To: [Fouad Haddad]
Subject: RE: Security Deposit

You can just indicate that on this same form.

14. The Landlord testified that, based on this email exchange, he feels he was misinformed and because of that misinformation, the Rental Officer found that he had not completed the proper forms and he was ordered to pay double the security deposit.

Tenant's Evidence

15. The Tenant testified primarily with respect to the amounts claimed by the Landlord for repairs, painting, etc. She testified that she believes any alleged damage to the rental unit was just normal wear and tear.
16. During the hearing, the Tenant was asked whether she had any specific submissions in response to the email provided by the Landlord. She submitted that this should have been brought up at the first hearing and that she does not believe this excuses the Landlord's ignorance to the correct process. The Commission Panel asked the Tenant whether she would like an opportunity to consider the email and provide further written submissions after the hearing. The Tenant confirmed that she did not need additional time to respond to the email.

Commission's Findings

17. The Landlord's position is that, based on the misinformation he received from the Residential Tenancy Office in response to his direct question about what form to use, the result in Order LD23-582 was unfair. The Commission agrees.
18. In reviewing the email thread, it appears clear to the Panel that the Landlord sought information about what form to use to "withhold [a] security deposit" and "claim repairs from [a] security deposit" and was, unfortunately, misinformed about the process he

should follow. In the Commission's opinion, the Landlord asked the right question and followed the process – using the Form 5 – that he was advised to use.

19. The parties are agreed that the tenancy ended on October 31, 2023. Therefore, at the time the Landlord sought the advice of the Residential Tenancy Office, he was still well within the prescribed 15-day statutory timeline to make a claim against the security deposit (per s. 40(1) of the Act).
20. The Landlord provided that Form 5 via email to the Tenant on November 6, 2023 (according to the testimony of the Tenant). The Landlord did not file the Form 5 with the Residential Tenancy Office, but in fairness to the Landlord, he was not advised that he was required to do so. Further, the Form 5 does not indicate anywhere on it that it must be filed with the Residential Tenancy Office, because it is not typically filed with the RTO when used in the correct process.
21. It is a statutory responsibility of the Director to provide information to landlords, tenants and other persons respecting rights and obligations under the Act. In the opinion of the Commission, it is reasonable for persons to expect that the Residential Tenancy Office will provide accurate information, and to rely on the information provided. Care should be taken to review questions, and prepare accurate responses. If situations arise where that is not possible, the Director would be better off to provide no information than to provide misleading, incomplete or incorrect information. In the case of landlords questioning anything related to making a claim against a security deposit, it would be advisable for the Director to draw the landlord's attention to the requirement to file a Form 2(B) within the timelines set out in the Act.
22. In this case, the Residential Tenancy Office seems to have misunderstood the Landlord's request, and provided incorrect information to the Landlord. The Landlord then relied on that information to his detriment.
23. On this basis, the Commission agrees with the Landlord that the outcome in Order LD23-582 was unfair and ought to be overturned. Fairness requires that when persons seek out general or basic information from the Residential Tenancy Office, they are provided with the accurate information necessary to allow them to make informed decisions about how to proceed. This is an integral part of the duty of administrative tribunals to provide a fair process. The failure to do so, in this case, was a denial of natural justice to the Landlord.
24. In *Perry v. Kings Square Affordable Housing Corporation*, 2023 PESC 32, the PEI Supreme Court commented that a fair hearing before an intermediate appellate body, such as the Commission, may cure procedural defects in an original administrative hearing (para 37). However, in this case, the Commission is of the opinion that the initial defect was serious to a degree that the rehearing by the Commission cannot cure the procedural deficiency and denial of natural justice. Fairness to both parties requires that they both have a full and fair opportunity to participate in a hearing with respect to the Landlord's claim against the security deposit through the correct process and focused on the evidence germane to that issue. Further, the Tenant will not be unduly prejudiced by the delay in this process.
25. For these reasons, the Commission allows the Landlord's appeal and reverses Order LD23-582. In order to restore fairness to this process, the Commission orders that the

Landlord has 15 days from the date of this Order to prepare and file the correct Form 2(B) Landlord Application to Determine Dispute with the Residential Tenancy Office to make a claim against the security deposit.

26. Finally, this case is distinguishable from previous Commission orders respecting security deposits and section 40 of the *Residential Tenancy Act*. In some previous orders, the Commission has maintained that the language in subsection 40(4) of the *Residential Tenancy Act* is non-discretionary and that where a landlord does not follow the security deposit scheme set out in the Act, the consequences of subsection 40(4) will be triggered. That remains true. However, this case is unique and can be distinguished. Essentially the Commission has before it a case where it concluded that but for the incorrect information provided by the Director, whose statutory obligation it is to provide information to the landlord, the Landlord would have filed the required form within the time limit prescribed by the Act. This Order should not be interpreted as opening the floodgates under section 40 of the Act. Rather, it is a very unique circumstance of the Landlord seeking assistance from the Director, and obtaining incorrect information resulting in the Landlord failing to take a step required by the Act. Further, in this situation, there is no evidence that there would be any substantial prejudice to the Tenant arising from the delay in having the security deposit return adjudicated.

5. CONCLUSION

27. The Commission allows the appeal. Order LD23-582 is reversed. The Landlord has 15 days from the date of this Order to prepare and file the correct Form 2(B) Landlord Application to Determine Dispute with the Residential Tenancy Office to make a claim against the security deposit.

IT IS ORDERED THAT

- 1. The appeal is allowed.**
- 2. Order LD23-582 is reversed.**
- 3. The Landlord has 15 days from the date of this Order to file the correct Form 2(B) Landlord Application to Determine Dispute with the Residential Tenancy Office to make a claim against the security deposit.**

DATED at Charlottetown, Prince Edward Island, January 24, 2024.

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.