



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: March 14, 2024

Dockets: LR24002

Type: Rental Appeal

INDEXED AS:

Order No: LR24-10

BETWEEN:

Ian Stewart and Kelly Stewart

Appellants

AND:

MacKenzie Deighan and Andrew Clark

Respondents

ORDER

Panel Members:

Kerri Carpenter, Commissioner and
Panel Chair

M. Douglas Clow, Vice-Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

A. INTRODUCTION

1. In this appeal, which was heard by the Commission on February 13, 2024, the Appellant landlords, Kelly Stewart and Ian Stewart (the “Landlords”) ask the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the landlords should return double the security deposit to the tenants.

B. BACKGROUND

2. The Residential Tenancy Office (“Rental Office”) issued Order LD23-617 on December 29, 2023. The Rental Office found that the Landlords did not, within 15 days of the termination of the tenancy agreement, return the security deposit to the Tenants, MacKenzie Deighan and Andrew Clark (the “Tenants”); and further, the Landlords did not file an application with the Rental Office to retain the security deposit during that 15-day time period.
3. The rental property in question consists of a unit located at 29 Scotiaview Heights, Stratford, PE (the “Premises”).
4. On January 15, 2024 the Commission received a Notice of Appeal from the Landlords. In the reasons attached to their Notice of Appeal the Landlords stated in part:

We have absolutely no problem returning the remainder of the deposit or even the full 1200 dollar deposit but feel that double the deposit is completely unfair since there was no consideration to the fact that we did not receive proper notice to begin with. I believe we should both have some responsibility in this and share the expense.

5. A hearing was originally scheduled for January 30, 2024 but was rescheduled to February 13, 2024.
6. The hearing was held on February 13, 2024 by telephone conference call. One of the Landlords, Kelly Stewart (“Ms. Stewart”) participated at the hearing. The Tenants also participated at the hearing.

C. DISPOSITION

7. The appeal is dismissed and the outcome of Order LD23-617 is confirmed.

D. ANALYSIS

8. Ms. Stewart submitted that the Tenants did not give sufficient notice before moving out as the Landlords were first informed by text message on October 3, 2023 that the Tenants would be moving out at the end of October. The Tenants moved out October 31, 2023. The Landlords were able to find a new tenant who moved into the Premises on November 20, 2023. As the Premises were unoccupied for 20 days in November, the Landlords intended to retain a portion of the \$1200.00 security deposit and, once the electricity bill was received, return the remainder, together with interest, to the Tenants. Ms. Stewart submitted that the Landlords believe it is unfair for them to have to return double the security deposit. She acknowledged that the Landlords did have conversations with the

Tenants about retaining part of the deposit but there was no actual agreement to do so. She also acknowledged that the Landlords did not file any forms with the Rental Office for retaining a portion of the security deposit.

9. The Tenants stated that they filed a Form 2(A) because they did not receive a notice from the Landlords that they were retaining a portion of the security deposit. The Tenants referred to page 13 of the file record before the Commission, which forms part of Exhibit E-5. The Tenants submit that page 13 establishes that on September 21, 2023, Ms. Stewart texted them that they would resume renting the Premises to summer tenants for the summer of 2024.

10. Section 40 of the *Residential Tenancy Act* (the "Act") deal with the return of security deposits. Subsections 40(1) through (4) 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.

11. With respect to subsection 40(3) cited above; the Commission takes note that there was no written agreement from the Tenants that all or a portion of the security deposit could be retained by the Landlords to pay a liability or obligation of the Tenants. There was also no order from the Director that the Landlords could retain some or all of the security deposit.
12. The Landlords submit that the Tenants failed to give them the required one-month notice. However, the Commission takes note of the provisions set out in subsection 69(1) of the *Act*:

69. Tenant may end tenancy early following notice

(1) Where a landlord gives a tenant a notice of termination of a tenancy under section 62, 63, 64, 66 or 67, the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice of termination on a date that is earlier than the effective date of the landlord's notice; and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

13. Given that the Landlords gave notice to the Tenants on September 21, 2023 that the tenancy would end at the beginning of the summer of 2024 and the Premises would revert back to summer cottage rental, the Commission finds that section 69 applies and the Commission finds that the Tenants gave the Landlords more than the required 10-day notice.
14. Section 40 of the *Act* imposes strict requirements on a landlord and failure to meet those requirements incurs a very substantial penalty. The Commission notes that there is no provision in the *Act* to allow the Director or the Commission to temper or waive the provisions set out in section 40 of the *Act*. The Landlords feel that the application of section 40 to them, in these factual circumstances, is unjust. However, as the *Act* does not provide the Director or the Commission any discretion to waive the provisions of section 40, the Commission finds that there is no error in Order LD23-617 and accordingly the Commission dismisses the appeal and confirms Order LD23-617.

E. CONCLUSION

15. The appeal is dismissed and Order LD23-617 is confirmed. The Landlords are required to pay the Tenants double the security deposit (\$1200.00 x 2 = \$2400.00) plus interest on the security deposit actually paid by the Tenants (\$1200.00) based on the date of this Order.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Rental Office Order LD23-617 is confirmed, subject to an updating in the calculation of interest.
3. The Landlords shall pay the Tenants the sum of \$2400.00 plus interest in the amount of \$35.46, for a total payable of \$2435.46, payable forthwith.

DATED at Charlottetown, Prince Edward Island, 14th day of March, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)
Kerri Carpenter, Commissioner

(sgd. M. Douglas Clow)
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.