



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: May 30, 2024

Dockets: LR24026

Type: Rental Appeal

INDEXED AS: *Blesson Philip v. A & M Holdings Inc.*

Order No: LR24-29

BETWEEN:

Blesson Philip (the "Tenant")

Appellant

AND:

A & M Holdings Inc. (the "Landlord")

Respondent

ORDER

Panel Members:

M. Douglas Clow, Vice Chair
Kerri Carpenter, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on May 14, 2024. The Tenant, by way of this appeal, asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in allowing the Landlord’s application to retain the security deposit, and disallowing the Tenant’s application seeking a return of the security deposit.

B. BACKGROUND

2. This Appeal relates to premises located at Apartment 4, 34 Northridge Parkway, Charlottetown PE (the “Rental Unit”).
3. The parties entered into a written tenancy agreement on March 22, 2023. Rent was \$825.00, due the first day of each month. A security deposit of \$825.00 was paid. The Tenant vacated the Rental Unit on March 1, 2024; however, he only notified the Landlord he was moving out on February 26, 2024.
4. On March 22, 2024 the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* (the “Landlord Application”) with the Residential Tenancy Office (the “Rental Office”). The Landlord Application was filed to claim against the security deposit.
5. The Landlord requested to retain the security deposit for three reasons:
 - (i) The Tenant owed rent for March, 2026;
 - (ii) The Tenant did not leave the Rental Unit in a clean state; and
 - (iii) The Tenant caused undue damage to the Rental Unit.
6. On March 26, 2024 the Tenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the “Tenant Application”) with the Rental Office. The Tenant Application was filed to request the security deposit be returned.
7. A teleconference hearing was held before the Rental Office.
8. In Order LD24-134, dated April 22, 2024, the Rental Office allowed the Landlord’s application to retain the security deposit on the basis that the Tenant had unpaid rent, having moved out at the end of February, 2024 but did not give the requisite notice required under subsection 55(2) of the *Residential Tenancy Act*, RSPEI 1988, cap. R-13.11 (the “Act”) to cease paying rent as of February 28, 2024. The Residential Tenancy Officer denied the Landlord’s claim for undue damage and lack of cleanliness, having found that the Landlord did not meet the burden of proof in establishing such claims on a balance of probabilities. Order LD24-134 directed the Landlord to pay to the Tenant the interest accrued on the security deposit during the tenancy.
9. The Tenant filed an appeal with the Commission on April 23, 2024. The Landlord did not file an appeal.

10. The Commission heard the appeal on May 14, 2024, by way of telephone conference call. The Tenant participated in the hearing. The Landlord's representative, Joey Gallant ("Mr. Gallant"), participated in the hearing.

C. DISPOSITION

11. The appeal is dismissed and Order LD24-134 is confirmed.

D. SUMMARY OF THE EVIDENCE

Tenant's Evidence

12. The Tenant's evidence primarily focused on concerns he had with respect to the condition of the Rental Unit. At the hearing, he testified that he became especially concerned as he felt the condition of the Rental Unit was affecting the health of his newborn baby. He emphasized that there was a broken window and the Landlord did not fix it. He gave the Landlord notice on February 26, 2024 that he was moving out of the Rental Unit and moved out on March 1, 2024.
13. The Tenant testified that the last month for which he paid rent was February 2024. He also acknowledged that he did not give the requisite notice normally required by the *Act*.

Landlord's Evidence

14. The Landlord's representative Mr. Gallant testified that he received notice on February 26, 2024, that the tenant was leaving the Rental Unit on March 1, 2024.
15. Mr. Gallant testified that after the Tenant departed the Rental Unit, he had to do a significant amount of cleaning. He says that he made efforts to rent the Rental Unit immediately, but was not able to confirm a Tenant until later in March, for a rental arrangement commencing April 1, 2024. After the Tenant departed, he also decided to do some maintenance and painting to the Rental Unit, but the Landlord testified that he did not stop looking for a Tenant at any point during the month the Rental Unit was vacant.
16. Mr. Gallant stated that the Landlord kept the security deposit because of improper notice and because the Rental Unit was not clean.
17. With respect to the Tenant's complaints about the window, Mr. Gallant explained that the inner glass on the window had a crack in it while the outer glass was not damaged. He had a new thermo-pane on order, it took many weeks to arrive and he did not want to install it during the winter.

E. ANALYSIS

18. The sole issue before the Commission is whether the Officer erred in ordering that the Landlord was entitled to retain the full amount of the security deposit.

19. The Rental Office found that there was insufficient evidence to establish the claims of the Landlord regarding uncleanliness and undue damage allegedly caused by the Tenant. The Commission agrees with the Rental Office in respect of both claims.
20. The sole remaining issue is whether the Landlord is entitled to retain the security deposit for unpaid rent in the amount of \$825.00 for the month of March 2024. We note that the parties agree that rent was not paid by the Tenant for March 2024, and the Commission must determine whether the Tenant owes March 2024 rent under the *Act*.
21. The Tenant acknowledged that he did not give notice until February 26, 2024, of his intention to terminate effective March 1, 2024. The required notice timeline is set out in subsection 55(2) of the *Act* which reads:

Notice for monthly or other periodic tenancy

- (2) A tenant may end a month-to-month or other periodic tenancy by giving the landlord a notice of termination effective on a date that
 - (a) is not earlier than one month after the date the landlord receives the notice; and
 - (b) is the day before the day that rent is payable under the tenancy agreement.
22. Therefore, because the Tenant provided notice on February 26, 2024, the earliest the tenancy agreement could be terminated was March 31, 2024.
23. However, section 46 of the *Act* also requires the Landlord to make reasonable efforts to mitigate damages where a tenant abandons a rental unit, meaning that the Landlord must attempt to find a new tenant as soon as possible and reduce the Landlord's losses. In this case, the Commission accepts the Landlord's testimony that he made reasonable efforts, beginning upon receipt of the notice of termination from the Tenant.
24. For these reasons, the Commission finds that the Tenant is responsible for rent for March 2024, at the monthly rate of \$825.00 per the tenancy agreement.
25. The Landlord seeks to retain the security deposit in satisfaction of the outstanding rent obligation of the Tenant.
26. Subsection 40(1) of the *Act* requires a landlord to either return the security deposit together with interest or make application to the Director to claim against the security deposit, within 15 days after the tenancy ends,. Here, the Landlord applied (Form 2(B)) on March 22, 2024 under section 75 of the *Act* to retain the security deposit. Therefore, upon finding that the tenancy agreement terminated on March 31, 2024, the Commission finds that the Landlord's application was filed within 15 days of the end of the tenancy.
27. The *Act* defines security deposit as meaning money paid on behalf of a tenant as security for the performance of an obligation or the payment of a liability of the tenant

respecting the rental unit.¹ The Commission is satisfied that the payment of rent is an obligation of the Tenant respecting the Rental Unit.²

28. As the Tenant was required to pay rent for the Apartment for the month of March 2024 and did not do so, the Commission finds that the Landlord is entitled to retain the \$825.00 security deposit in satisfaction of the unpaid rent in the same amount.

29. The Landlord is, however, required to return the interest earned on the security deposit from May 22, 2023, to, the date of this Order in the amount of \$20.32.

30. The Commission's findings are consistent with those of the Rental Office and therefore the appeal is dismissed and Order LD24-134 is confirmed.

F. CONCLUSION

31. The Landlord is entitled to retain the security deposit of \$825.00 in satisfaction of outstanding rent for March 2024. The Landlord is required to return interest earned on the security deposit to the Tenant in the amount of \$20.32.

IT IS ORDERED THAT

- 1. The appeal is dismissed.**
- 2. Order LD24-134 is confirmed.**
- 3. The Landlord shall retain \$825.00 from the security deposit.**
- 4. The Landlord shall pay the Tenant \$20.32 in accrued interest within seven (7) days of the date of this Order.**

DATED at Charlottetown, Prince Edward Island, 30th day of May, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice Chair

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

¹ 1(q) "**security deposit**" means money or any property paid by or on behalf of a tenant to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant respecting the rental unit;

² See, for example, subsection 19(1) of the Act, requiring a tenant to pay rent when due.

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.