



Date Issued: June 4, 2024
Docket: LR24021
Type: Rental Appeal

INDEXED AS: *White and Haddad v. Payne*
Order No: LR24-31

BETWEEN:

Jaime White and Mahin Haddad (the "Landlords")

Appellant

AND:

Amber Payne (the "Tenant")

Respondent

ORDER

Panel Members:

M. Douglas Clow, Acting 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 April 16, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a tenant was entitled to a double return of her security deposit.

B. BACKGROUND

2. This appeal concerns a residential property located at 10 Hunt Avenue, Charlottetown, PE (the “Rental Unit”).
3. On February 15, 2021, the Landlords and Tenant, along with four other co-tenants, entered into a written fixed-term tenancy agreement (the “Tenants”). Once the fixed term expired, the tenancy converted to a month-to-month agreement. Rent was \$1,850.00 due on the 15th day of each month. A security deposit of \$1,850.00 was paid.
4. On November 14, 2023, the Tenant gave notice to the Landlords that she would be vacating the Rental Unit by December 15, 2023. On January 10, 2024, the Tenant filed a Tenant Application to Determine Dispute (Form 2(A)) with the Rental Office. The Tenant’s Application sought a return of her security deposit.
5. In Rental Office Order LD24-071, issued on March 1, 2024, the Residential Tenancy Officer ordered the Landlords to pay compensation in the amount of \$939.31 to the Tenant. This sum of \$939.31 represented a return of the security deposit of \$462.50, interest in the amount of \$14.31, and a further \$462.50 to be awarded based on the Landlord’s alleged non-compliance with section 40 of the Act.
6. On March 21, 2024, the Landlords filed a Notice of Appeal with the Commission.
7. The appeal was heard by the Commission by telephone conference call on April 16, 2024. Ms. White represented both of the Landlords (referred to herein as the “Landlord”). Erin Robertson (“Ms. Robertson”) testified for the Landlords. The Tenant represented herself.

C. DISPOSITION

8. The Commission allows the appeal and reverses Order LD24-071.

D. EVIDENCE OF THE PARTIES

Landlords’ Evidence

9. The Landlord testified that the signed tenancy agreement, dated February 15, 2021,¹ listed five tenants. Four of the five people were actual occupants of the Rental Unit while the fifth was the mother of two of the tenants (which the Landlord testified was for financial security reasons). Ms. Robertson was one of the named tenants on the agreement. The tenancy agreement, at section 37, identified Ms. Robertson as the tenant contact for any matter relating to the tenancy. For example, Ms. Robertson was responsible for collecting

¹Commission Exhibits, Exhibit E-17, pgs. 55-61.

rent money from the Tenants and paying the monthly rent to the Landlord. The Landlord testified that Ms. Robertson made one single payment of \$1,850.00 for the security deposit. Ms. Robertson confirmed this in her testimony, testifying that each of the Tenants e-transferred her their portion and she paid the Landlord.

10. The Landlord testified that when she received the Tenant's notice that she would be moving out, she told her she would need to check with the Rental Office about how to deal with the security deposit because she was renting the entire house, not room by room, and the tenancy with the remaining tenants (the "Remaining Tenants") would be ongoing and the house would not be inspected for damage until the tenancy fully ended. The Landlord confirmed at the hearing that she did not inspect the Rental Unit when the Tenant moved out.
11. The Landlord testified that sometime in December 2023 the Remaining Tenants found a sub-tenant. The sub-tenant paid a share of the security deposit directly to Ms. Robertson, in the same amount as the Tenant had paid (\$462.50). The Landlord testified that, in her mind, this replaced the Tenant's share of the security deposit and that Ms. Robertson was then responsible for paying the Tenant. On December 18, 2023, the Landlord sent a text message to the Tenant indicating that Ms. Robertson would send her back the security deposit. The Landlord said at this point, she felt as though she had effectively returned the security deposit and it was now a matter between co-tenants over the payment of shared expenses.
12. The Landlord testified that a new tenancy agreement was signed on January 15, 2024. This new document removed the Tenant's name and also removed the name of the mother of two of the tenants. The new sub-tenant was not added to the lease.
13. Ms. Robertson testified that the Tenant owes a share of various common expenses. She testified that the Tenant has not agreed to the sum of these owed expenses which she plans to deduct from the Tenant's portion of the security deposit. Ms. Robertson testified that once there is agreement, Ms. Robertson would return the remaining part of the Tenant's portion of the security deposit to the Tenant. The evidence before the Commission includes many messages back and forth between Ms. Robertson and the Tenant discussing outstanding expenses.

Tenant's Evidence

14. The Tenant testified that on November 14, 2023, she gave notice to the Landlord via text message that she would be vacating the Rental Unit by December 15, 2023. That text message also inquired about an inspection and a return of part of the security deposit. The Tenant stated that she actually moved out on November 22, 2023, and her portion of the rent was paid up to December 15, 2023.
15. The Tenant testified that she believed, per the terms of the tenancy agreement, that the Landlord was to return her portion of the security deposit directly to her rather than Ms. Robertson. She said she understood that all contact with respect to the tenancy was to go through Ms. Robertson, but did not know this included the return of the security deposit.
16. The Tenant also provided testimony about the payment of shared expenses and the amount outstanding.

E. ANALYSIS

17. The question the Commission must answer on this appeal is whether the Tenant was entitled to a double return of her security deposit. In this case, we find the answer to that question is no. We are satisfied that the Tenant was one of several co-tenants and that the tenancy agreement did not end when the Tenant moved out of the Rental Unit. Therefore, the security deposit provisions at section 40 of the *Residential Tenancy Act* were not triggered.
18. We pause here to note that the Commission had two copies of the tenancy agreement in evidence. One was signed while the other was not. There was some discrepancy between the Landlord and the Tenant about which of those agreements was the “final version”. We accept that the copy of the tenancy agreement that is signed and initialed by all parties² was the tenancy agreement in place between the parties.
19. The tenancy agreement named five tenants – four occupants and the mother of two of the tenants for financial security. The Commission finds that all of the Tenants were co-tenants and the fact that the Tenant moved out did not end the tenancy agreement. Therefore, because the tenancy was ongoing, the Landlord was not required to return any portion of the security deposit.
20. This finding is distinguished from Order LR24-08 (*Cameron Apartments Inc v. Heritage Awogbade*). In that case, the Commission commented that ordinarily a single tenancy agreement document with two or more tenants is a “joint tenancy”; however, in that case, we found that the Landlord’s practice of returning a proportionate amount of the security deposit each time a tenant moved out implied separate tenancy agreements with each tenant. Further, in that case, the Landlord chose to only evict one tenant, effectively severing the tenancy agreement with that one tenant.
21. In this case, the evidence was clear that the Landlord rented the entire house to the Tenants collectively, and it was not on a room-by-room basis. One tenant, Ms. Robertson, was designated as the contact for all Tenants for all matters arising out of the tenancy agreement, including the security deposit. Ms. Robertson made one single monthly rent payment, including the amount for utilities, to the Landlord on behalf of all Tenants. Also, Ms. Robertson made one single security deposit payment to the Landlord on behalf of all Tenants. She testified that each co-tenant e-transferred her their portion and she paid the Landlord.
22. Therefore, as found above, there was a single tenancy agreement between the Landlord and all Tenants. The Landlord was correct in her belief that the tenancy did not end just because one tenant moved out and, therefore, the requirement to inspect the Rental Unit and was not triggered. In the circumstances of this case, the Landlord was not required to return the Tenant’s specific portion of her security deposit. The Landlord is entitled to keep the entire \$1,850.00 security deposit until the tenancy fully ends.
23. In this case, the Tenants collectively pooled their portions together to pay the Landlord the entire security deposit. Therefore, it is up to the Tenants to settle how the Tenant’s portion of the security deposit is paid back to her. The Commission agrees with the Landlord that

² Commission Exhibits, Exhibit E-17, pgs. 55-61.

this is a matter between co-tenants who could not come to an agreement on outstanding expenses.

24. As the tenancy agreement did not end, the provisions of section 40 of the Act are not triggered, and the Landlord is not required to pay the Tenant double her security deposit.

F. CONCLUSION

25. The appeal is allowed. Order LD24-071 is reversed.

IT IS ORDERED THAT

1. **The appeal is allowed.**
2. **Rental Office Order LD24-071 is hereby reversed.**

DATED at Charlottetown, Prince Edward Island, 3rd day of June, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)
M. Douglas Clow, Acting 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.