



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

**Date Issued: June 12, 2024**

**Docket: LR24020**

**Type: Rental Appeal**

INDEXED AS: *Quigley v. Pierre*

Order No: LR24-33

**BETWEEN:**

Peter Quigley (the "Tenant")

**Appellant**

**AND:**

Ashleigh Pierre (the "Subtenant")

**Respondent**

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## ORDER

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Panel Members:

Kerri Carpenter, Commissioner  
M. Douglas Clow, Acting Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

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Commission Clerk

Island Regulatory and Appeals Commission

## **A. INTRODUCTION**

1. This appeal was heard by the Commission on April 22, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a subtenant was entitled to a double return of her security deposit.

## **B. BACKGROUND**

2. This appeal concerns a residential property located at 1 Redwood Lane, Charlottetown, PE (the “Rental Unit”).
3. The Tenant rents the Rental Unit from the owner of the residential property. The Tenant and Subtenant entered into a written tenancy agreement, dated August 4, 2023 (the “Subtenancy Agreement”). The terms of the Subtenancy Agreement included that rent was payable on the first day of each month, in the amount of \$800.00, inclusive of utilities. The Subtenant paid a security deposit of \$800.00 on August 4, 2023.
4. The Subtenant vacated the Rental Unit in October 2023.
5. On December 6, 2023, the Subtenant filed a Tenant Application to Determine Dispute (Form 2(A)) with the Rental Office requesting the return of her security deposit.
6. In Rental Office Order LD24-069, issued on February 28, 2024, the Residential Tenancy Officer ordered the Tenant to pay compensation in the amount of \$1,611.29 to the Subtenant. This sum of \$1,611.29 represented a return of the security deposit of \$800.00, interest in the amount of \$11.29, and a further \$800.00 to be awarded based on the Tenant’s alleged non-compliance with section 40 of the Act.
7. On March 15, 2024, the Tenant filed a Notice of Appeal with the Commission.
8. The appeal was originally scheduled for April 9, 2024, via telephone conference call. At the beginning of the hearing on April 9, 2024, the Tenant indicated that he had not previously been aware of the hearing date; however, he did say that he was prepared to proceed. Further, the Subtenant said that she had tried to submit additional evidence, in the form of a photograph, but missed the evidence submission deadline. The Tenant had not seen this photograph. For this reason, the Commission decided to adjourn the hearing in order to circulate the photograph to the Tenant for review prior to the hearing.
9. Ultimately, the appeal was heard by the Commission by telephone conference call on April 22, 2024. The Tenant appeared and represented himself. The Subtenant also appeared and represented herself.

## **C. DISPOSITION**

10. The Commission dismisses the appeal and confirms Order LD24-069.

## **D. EVIDENCE OF THE PARTIES**

### **Landlords' Evidence**

11. As a preliminary comment regarding the Tenant's evidence, at the hearing on April 22, 2024, the Tenant raised that he had submitted a total of 27 photographs and videos into evidence. The Commission Panel confirmed that they had received 12 videos and five photographs from the Tenant. After some discussion at the hearing between the Tenant and the Commission Panel about what evidence the Tenant thought he submitted and the evidence the Commission had actually received, the Chair of the Panel directly asked the Tenant if he wanted to adjourn the hearing so that he could submit any additional information. In response, the Tenant answered "I don't, I absolutely do not." The Tenant then proceeded to provide his oral testimony.
12. The Tenant testified that within one month of the Subtenant moving into the Rental Unit, he had given her notice to leave. He testified that before the Tenant moved in, he bought new furniture and bedding for the room of the Rental Unit in which the Subtenant would be staying. However, when she moved out, much of this was damaged. He alleged that she had burned candles on a dresser, leaving wax rings that damaged the dresser. He also alleged she ruined a desk that required sanding and repainting. The Tenant testified that he also had to deep clean the Subtenant's room and the fridge, replace the new bedding, and remove garbage.
13. The Tenant testified that the Subtenancy Agreement ended in October 2023. When directly asked by the Chair of the Panel whether he took any steps to retain the security deposit, the Tenant testified that he did not because he was not aware that he had to.

### **Tenant's Evidence**

14. The Subtenant testified that she did not leave her room or the Rental Unit in the state alleged by the Tenant. She submitted a video into evidence showing the room before she moved out, and that she had done dishes in the kitchen. The Subtenant acknowledged that there may have been some damage to the dresser, and that the Tenant may have been entitled to keep a portion of her security deposit. However, she testified that he was unfairly trying to get away with keeping the entire security deposit.

## **E. ANALYSIS**

15. 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 yes.
16. First, we note that according to subsection 30(6)(b) of the *Residential Tenancy Act*, the Subtenant is entitled to the benefits of the *Residential Tenancy Act* during the subtenancy. Therefore, she is entitled to the benefits of the security deposit provisions in the Act.
17. Section 40 of the *Residential Tenancy 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. In this case, the Tenant was acting in place of a landlord having entered into a subtenancy.

18. The *Residential Tenancy Act* imposes a strict 15-day time limit. A landlord (or in this case, a tenant acting as 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)).
19. As previously stated by the Commission in Order LR23-76, the policy behind the security deposit provisions in the *Residential Tenancy Act* 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 *Residential Tenancy Act* 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>
20. In the present appeal, the Tenant did not make application to the Director within 15 days, or at all, as required by the *Residential Tenancy Act*. This was confirmed by him in his testimony. Instead, the Subtenant had to bring the Application that is the subject of this appeal in order settle the issue of the security deposit.
21. 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 Tenant failed to comply with the requirements of the *Residential Tenancy Act* 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.
22. Accordingly, the Commission agrees with the outcome of Order LD24-069 and this appeal is dismissed. The Tenant shall pay the Subtenant double the amount of the outstanding security deposit, plus accrued interest on the original (non-doubled) deposit amount:

Security Deposit	\$800.00
Interest on Security Deposit <sup>3</sup>	\$16.28
Double Security Deposit per s. 40(4)	<u>\$800.00</u>
Total	<b>\$1,616.28</b>

23. The total amount the Landlord must pay to the Tenants is: \$1,616.28.
24. As a final comment, having reviewed the video evidence submitted by the Tenant, it appears to us that the Rental Unit was to be relatively clean and tidy. There are no bags of garbage, the dishes are washed, and there is no obvious dirt or damage. Therefore, we would not likely be satisfied, in any event, that the Landlord could retain the entire damage deposit.

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

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

<sup>3</sup> Calculated from August 4, 2023 to the date of this Order.

## F. CONCLUSION

25. The appeal is dismissed. Order LD24-071 is confirmed, subject to a variation of the amount owing for interest on the security deposit.

### IT IS ORDERED THAT

1. The appeal is dismissed.
2. Rental Office Order LD24-071 is hereby confirmed, subject to a variation of the amount owing for interest on the security deposit.
3. The Landlord shall pay the Tenant \$1,616.28 within seven (7) days of the date of this Order.
4. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Residential Tenancy Act*.

**DATED** at Charlottetown, Prince Edward Island, 12<sup>th</sup> day of June, 2024.

### BY THE COMMISSION:

(sgd. Kerri Carpenter)  
Kerri Carpenter, Commissioner

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