



Date Issued: July 10, 2024
Dockets: LR24038
Type: Rental Appeal

INDEXED AS: Heather Taweel v. Tatiana Ibanez and Sayaka Takizawa
Order No: LR24-39

BETWEEN:

Heather Taweel (the "Landlord")

Appellant

AND:

Tatiana Ibanez and Sayaka Takizawa (the "Tenants")

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
M. Douglas Clow, Acting Chair

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 June 18, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord was responsible to pay double the security deposit.

B. BACKGROUND

2. On March 21, 2024 the Tenants filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for double the security deposit.
3. On April 25, 2024 the Tenants and the Landlord participated in a teleconference hearing before the Residential Tenancy Officer (the “Officer”) for determination of the Application. Order LD24-158 found that the Landlord did not comply with Section 40 of the *Residential Tenancy Act* and that the Tenants are entitled to double the security deposit.
4. The Landlord appealed Order LD24-158 on May 30, 2024.
5. The Commission heard the appeal on June 18, 2024, by way of telephone conference. The Landlord and the Tenants participated.

C. DISPOSITION

6. The appeal is dismissed and Order LD24-158 is confirmed. The Landlord must return to the tenants double the security deposit, in the amount of \$1,000, together with interest in the amount of \$11.04, representing interest on the actual security deposit for the period of January 12, 2024 to the date of the Commission’s Order.

D. SUMMARY OF EVIDENCE

7. The Landlord testified that the Tenants were anxious to move in to the rental unit. The rental unit was not clean and the parties agreed the Tenants would be able to move in early and clean the unit themselves. In exchange for the Tenants cleaning the unit themselves, they would get to move in early and not be charged rent until February 1, 2024. The Tenants then paid a security deposit of \$500 to the Landlord on January 12, 2024. The Landlord stated that the Tenants advised her five days later that they decided not to move into the unit. She stated that the Tenants did not give her an opportunity to have the necessary repairs made.
8. The Landlord stated that she appealed Order LD24-158 because she was unable to pay on time. She also wanted to clear the record as to the condition of the unit. She was also concerned that the Officer had confused files as Order LD24-158 referred to the landlord as a “he” rather than “she”. The Landlord stated that she is now aware of the requirements of section 40 of the Residential Tenancy Act (the “Act”) and she was not disputing that she had to pay double the security deposit plus interest to the Tenants.

9. The Commission observes that the Notice of Appeal filed by the Landlord was blurry and difficult to read. Commission staff had earlier requested a clear version but no clear version was made available. At the hearing, the Landlord clarified the purpose of the appeal and acknowledged that she is required to return a double security deposit to the Tenants.
10. The Tenants testified that the unit had issues which required repair and not just cleaning. The Tenants stated that they never moved in to the unit. They took the keys, visited the unit and were trying to determine what they needed to do. They returned the keys to the Landlord on January 18, 2024. They stated that the Landlord was able to rent the unit for February 1, 2024.

E. ANALYSIS

11. Given that the Landlord acknowledged she is obligated to pay double the security deposit, plus interest, to the Tenant, the sole issue to be determined is whether Order LD24-158 incorrectly referenced a landlord other than the Landlord Ms. Taweel.
12. With respect to the Landlord's concerns that the Officer may have confused files by referring to "he" rather than "she", the Commission wishes to point out that the Officer in Order LD24-158 was quoting from an earlier decision of the Commission. The Officer was citing this decision as a precedent as to the operation of section 40 of the Act. In that quoted precedent Order, the landlord in question happened to be identified as male. There was therefore no confusion on the part of the Officer in respect of this particular matter.
13. As stated above, the Landlord acknowledged the obligation to pay double the security deposit because she neither returned the security deposit, nor made application to the Rental Office to retain the security deposit, within 15 days of the end of the tenancy. As the Landlord is now aware, failure to comply with section 40 of the Act requires the Landlord to pay double the security deposit, together with interest, to the Tenants.
14. Accordingly, the Commission agrees with the reasoning of the Officer in Order LD24-158. The Commission varies the interest portion payable to include interest earned from May 17, 2024 to the date of the Commission's Order.

F. CONCLUSION

15. The appeal is dismissed and Order LD24-158 is confirmed. The Landlord must pay to the Tenants the sum of \$1,000 representing double the security deposit, together with interest earned to the date of the Commission's Order.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD24-158 is confirmed, subject to a variance in the amount of interest payable.
3. The Landlord must pay the Tenants, no later than July 31, 2024, the sum of \$1,000, together with interest for the period of January 12, 2024 to present date in the amount of \$11.04, for a total payable of \$1,011.04.

DATED at Charlottetown, Prince Edward Island, 10th day of July, 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.