



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: November 28, 2024

Dockets: LR24056

Type: Rental Appeal

INDEXED AS: Matthew McGee v. Angel Ezenwa

Order No: LR24-65

BETWEEN:

Matthew McGee (the "Landlord")

Appellant

AND:

Angel Ezenwa (the "Tenant")

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
Murray MacPherson, Commissioner

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 September 19, 2024, the Appellant asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”), referenced in the Residential Tenancy Act (the “Act”) as the “Director”, erred in finding that the Landlord must pay the Tenant the sum of \$2,888.75 by August 26, 2024.

B. BACKGROUND

2. This matter relates to a rental unit located at Apartment 102 – 46 River Ridge Drive, Charlottetown, Prince Edward Island (the “Rental Unit”).
3. On June 21, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Rental Office seeking a monetary order requiring the Landlord to pay her double the security deposit. It is noteworthy that the Landlord is the main tenant at the Rental Unit. He had a tenancy agreement with the owner of the rental unit, in that context is a “tenant” within the meaning of the Act; however, with respect to the Tenant in this matter, Mr. McGee is a “landlord” within the meaning of clause 1.(h)(iii) of the Act. The Landlord sublet the entirety of the Rental Unit to the Tenant and the Landlord no longer lived at the Rental Unit when the Tenant moved in.
4. The sublet arrangement was for the period October 1, 2023 to April 30, 2024. The Landlord had requested a security deposit in the amount of \$1430.00 from the Tenant.
5. On July 30, 2024 at 9:00 a.m. the Tenant and the Tenant’s witness joined a teleconference hearing before the Residential Tenancy Officer (the “Officer”) for determination of the Application. The Officer telephoned the Landlord but was unable to connect. The hearing was adjourned to 12:00 noon on August 6, 2024.
6. On August 6, 2024 the Tenant joined the teleconference hearing before the Officer. The Officer telephoned the Landlord but was unable to connect. The hearing proceeded in the absence of the Landlord.
7. On August 6, 2024, the Residential Tenancy Office issued Order LD24-253 which ordered that the Landlord must pay the Tenant \$2,888.75 to the Tenant by August 26, 2024.
8. The Landlord appealed Order LD24-253 on August 19, 2024.
9. The Commission heard the appeal on September 19, 2024, by way of telephone conference. The Landlord, Matthew McGee, and the Tenant, Angel Ezenwa, attended the hearing. Henry Ezenwa Amazud testified on behalf of the Tenant.

C. DISPOSITION

10. The appeal is dismissed and Order LD24-253 is confirmed, subject to an updating of the interest on the security deposit.

D. ISSUES

11. The issue to be determined:

- A. Is the Landlord required under the Act to pay the Tenant double the security deposit, plus interest on the security deposit?

E. SUMMARY OF EVIDENCE

12. The Landlord acknowledged that the security deposit was paid by the Tenant to the Landlord, in the amount of \$1430.00 and that the Landlord has not repaid any of it to the Tenant. The Landlord explained that the Tenant moved out at the end of May 2024 and the Landlord was initially waiting for his landlord to return his security deposit in order that he would have the money to return to the Tenant. He explained this to the Tenant and her husband. The Landlord then realized that the Tenant had not given the required amount of notice and he then decided he would keep the security deposit for unpaid rent for the month of June.
13. The Tenant testified that she sublet from the Landlord with the sublet term to expire at the end of April. She asked the Landlord if he would talk to his landlord about transferring his lease to her. The Tenant did not hear back from the Landlord on this matter and she then found a cheaper apartment and she informed him of this on May 6, 2024. The Landlord then told her he would return her security deposit once he received his security deposit from his landlord.

F. ANALYSIS

14. The Landlord stated that he initially intended to return the security deposit once his own security deposit was returned to him. Such a position is unlawful. A security deposit is to be held by a landlord in trust. Under subsection 14(2) of the *Act*, a security deposit received by a landlord is not an asset and is to be held in trust. Under subsection 14(7) of the *Act*, a landlord is, within two banking days of receipt of the security deposit, required to deposit the security deposit in an interest bearing account. Accordingly, the Landlord's explanation that he needed to await the return of his own security deposit before he would be able to pay the Tenant her security deposit is not justifiable under the *Act*.
15. The Landlord also took the position that he would not return the security deposit as he received insufficient notice from the Tenant and therefore sought to retain the security deposit in lieu of unpaid rent for the month of June 2024.
16. While the tenancy agreement was initially scheduled to end on April 30, 2024, the Commission finds that the tenancy agreement was extended to May 30, 2024 when the Tenant moved out of the rental unit (see Exhibit E-5 - Form 2(A) dated June 21, 2024). In order for the Landlord to retain the security deposit, he must first meet one of the requirements set out in section 40 of the *Act*. The Commission will therefore consider whether any of the section 40 requirements were met by the Landlord.
17. Subsection 40(1) requires the Landlord to either return the security deposit within 15 days of May 30, 2024 or make an application to the Director to claim against the security

deposit, also within 15 days of May 30, 2024. Based on the evidence, the Landlord did neither.

18. Subsection 40(2) allows the Landlord to retain an amount that remains unpaid and was previously ordered by the Director to be paid by the Tenant to the Landlord. There is no such Order in evidence.
19. Clause 40(3) (a) allows the Landlord to retain an amount from the security deposit if at the end of the tenancy the Tenant agrees in writing that the Landlord may retain the amount to pay a liability or an obligation of the Tenant. There is no such agreement in evidence.
20. Clause 40(3)(b) permits the Landlord to retain an amount from the security deposit if after the end of the tenancy the Director orders that the Landlord may retain the amount. There is no such Order in evidence.
21. Subsection 40(4) sets out the consequences of non-compliance with section 40. Where a landlord does not comply with section 40, the landlord shall not make a claim against the security deposit and shall pay the tenant double the amount of the security deposit.
22. There are no provisions in the *Act* to grant the Director or the Commission the power to waive or temper the requirements of section 40.
23. In the present appeal, the Commission agrees with the findings set out in Order LD24-253. The Landlord failed to comply with section 40 of the *Act* and must pay the Tenant double the security deposit together with interest on the original portion of the security deposit:

Security Deposit	\$1,430.00
Interest (September 26, 2023 to August 6, 2024)	\$ 28.75
Interest (August 7, 2024 to issue date of Commission Order)	\$ 9.93
Security Deposit (double award per clause 40(4)(b))	\$1,430.00
Total	\$2,898.68

24. The Commission notes that this appeal relates to the Tenant's application regarding the security deposit. The Commission is not aware of whether the landlord has filed, with the Residential Tenancy Office, an application for unpaid rent, however no such application is before the Commission. Therefore, the Commission makes no determination as to whether rent is owing for the month of June, 2024.

G. CONCLUSION

25. The appeal is dismissed. Order LD24-253 is confirmed, subject to an updating of the interest payable on the security deposit.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD24-253 is confirmed, subject to an updating of the interest payable on the original portion of the security deposit.
3. The Landlord shall pay the Tenant the sum of \$2,898.68, by December 6, 2024, calculated as follows:

Security Deposit	\$1,430.00
Interest (September 26, 2023 to August 6, 2024)	\$ 28.75
Interest (August 7, 2024 to issue date of Commission Order)	\$ 9.93
Security Deposit (double award per clause 40(4)(b))	\$1,430.00
Total	\$2,898.68

DATED at Charlottetown, Prince Edward Island, 28th day of November, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

(sgd. Murray MacPherson)

Murray MacPherson, 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.