



Date Issued: February 20, 2025
Dockets: LR24085
Type: Rental Appeal

INDEXED AS: Spencer McAllister and Albert McAllister v. Mathew Brooks
Order No: LR25-09

BETWEEN:

Spencer McAllister and Albert McAllister (the "Landlords")

Appellants

AND:

Mathew Brooks (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. This appeal was heard by the Commission on January 7, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the Landlords must pay the Tenant \$1,886.89 by November 25, 2024.

B. BACKGROUND

2. This appeal concerns a rental unit located at Unit A 21720 Trans Canada Highway, Albany, PEI (the "Rental Unit").
3. The parties entered into a tenancy agreement that commenced on or about November 30, 2023. Rent in the amount of \$1,450.00 was due on the first day of the month and a \$1,000.00 security deposit was paid in three installments (\$500.00 on November 30, 2023, \$150.00 on December 30, 2023 and \$350.00 on February 3, 2024).
4. On March 31, 2024 the Landlords served the Tenant with a *Form 4 (B) Eviction Notice* (the "Notice") for possession of the Unit by a family member of the Landlords. The effective date in the Notice was May 31, 2024 but the parties later understood that the actual effective date was July 31, 2024.
5. On August 4, 2024 the Tenant vacated the Unit.
6. On September 10, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Tenant's Application") with the Residential Tenancy Office (the "Rental Office") seeking compensation for double the \$1,000.00 security deposit retained by the Landlord and compensation for moving expenses.
7. On September 20, 2024 the Landlords filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Landlords' Application") with the Rental Office claiming for furnace oil, missing curtain rods and blinds, unpaid rent, cleaning and painting.
8. On October 15, 2024 the Tenant and the Landlords participated in a teleconference hearing. The parties confirmed that they received the Evidence Package and that all the documents submitted to the Rental Office were included. The parties were permitted to submit additional documents after the hearing.
9. The Residential Tenancy Office issued Order LD24-370 on November 4, 2024, which ordered the Landlords to pay the Tenant \$1,886.89 by November 25, 2024.
10. The Landlords appealed Order LD24-370 on November 22, 2024.
11. The Commission heard the appeal on January 7, 2025, by way of telephone conference. The Landlords, Spencer McAllister and Albert McAllister, and the Tenant Mathew Brooks attended the hearing.
12. The applicable legislation is the *Residential Tenancy Act*, cap. R-13.11 (the "Act").

C. DISPOSITION

13. The appeal is dismissed and Order LD24-370 is confirmed.

D. ISSUE

14. Did the Landlords comply with the return of security deposit requirements set out in section 40 of the *Act*?

E. SUMMARY OF EVIDENCE

15. The Landlords testified that they are appealing the part of Order LD24-370 requiring them to return double the security deposit to the Tenant. They testified that they are just regular people and questioned how they would know of such a requirement.

16. The Landlords testified that the Tenant had told them that they could keep part of the security deposit for damages. They also maintain that the Tenant did not put oil in the furnace oil tank to restore it to the same level, one half a tank, as when the tenancy began. The Landlords submit that at the beginning of the tenancy they had an oral agreement with the Tenant supported by a handshake to refill the furnace oil to the same level upon the end of the tenancy.

17. The Landlords submit that at the end of the tenancy they had an oral agreement with the Tenant to keep the full security deposit of \$1,000.00 on the basis of \$500.00 for the furnace oil and \$500.00 for damage. The Landlords explained that the basis for this agreement was an August 6, 2024 text message between the Tenant and Darlene McAllister, followed by a telephone call between Ms. McAllister and the Tenant where they maintain that the Tenant orally agreed to the proposal offered in the August 6, 2024 text message. Under questioning from the Commission Panel, the Landlords acknowledged that they were not on the phone with Ms. McAllister. The Landlords also acknowledge that Ms. McAllister was not present at the hearing to offer her testimony.

18. The Tenant testified that the *Act* is available online for the benefit of landlords and tenants and ignorance of the law is no excuse for failing to comply with the law.

19. The Tenant submitted that the furnace oil tank was about $\frac{1}{4}$ full when he moved in. The Tenant testified that he only orally agreed to a \$250.00 hold back from the deposit.

F. ANALYSIS

20. This appeal focuses on section 40 of the *Act* and whether the Landlords have complied with the return of security deposit provisions set out in that section. The Landlords acknowledged not having returned the security deposit but rely upon an alleged oral agreement permitting them to retain the security deposit, as well as not knowing the requirements of the *Act* in respect of the return of the security deposit and the appropriate procedure for seeking to retain all or part of a security deposit.

21. Subsections 40(1) through (4) of the *Act* read:

40. Return of security deposit

- (1) *Except as provided in subsection (2) or (3), within 15 days after the date the tenancy ends or is assigned, the landlord shall either*
- (a) *issue payment, as provided in subsection (5), of any security deposit to the tenant with interest calculated in accordance with the regulations; or*
 - (b) *make an application to the Director under section 75 claiming against the security deposit.*

Landlord may retain amount from security deposit

- (2) *A landlord may retain from a security deposit an amount that*
- (a) *the Director has previously ordered the tenant to pay to the landlord; and*
 - (b) *remains unpaid at the end of the tenancy.*

Retention by landlord, other circumstances

- (3) *A landlord may retain an amount from a security deposit if*
- (a) at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
 - (b) after the end of the tenancy, the Director orders that the landlord may retain the amount.*

Consequences of non-compliance

- (4) *Where a landlord does not comply with this section, the landlord*
- (a) shall not make a claim against the security deposit; and*
 - (b) shall pay the tenant double the amount of the security deposit.*

Emphasis added.

22. The position of the Landlords is that they had an agreement with the Tenant to retain the full \$1,000.00 security deposit. They submit that the agreement commenced with a proposal contained in the August 6, 2024 text message, and they further submit that the Tenant accepted the proposal in a telephone conversation which occurred shortly after the text message. The Landlords were not parties to the telephone call and did not call Ms. McAllister as a witness.

23. The text message dated August 6, 2024 is printed on page 115 of the Commission file record. The message reads:

Hi Matt ya it was 1000\$ deposited so, instead of you half fulling [sic] the tank and buying 2 new curtain rods and cleaning it up. Maybe call it square and send me the receipts for the moving fees and I will entraner [sic] that money.

24. At the Commission hearing the Landlords attempted to convince the Commission of the existence of an oral agreement whereby the Tenant allegedly agreed to allow the Landlord to keep the full security deposit. The Tenant, who was a party to the telephone call in question, denies any such agreement. The other party to the telephone call, Ms. McAllister, was not presented as a witness. The Landlords have relayed to the Commission their understanding of a phone call to which neither of the Landlords was a party. This amounts to hearsay evidence.
25. While the Commission may accept hearsay evidence, in cases where there is direct evidence (in this case from the Tenant who was an actual party to the phone call in question) which contradicts the hearsay evidence, the Commission must balance the contradictory evidence. Given that we have direct evidence from one party to the conversation, the Commission determines, on a balance of probabilities, that the Tenant's evidence that no agreement regarding the retention of the security deposit was reached in the phone call in question. Further, the Commission notes that the legislation clearly calls for a written agreement, per clause 40(3)(a) of the *Act*.
26. In the present appeal, the undisputed evidence is that the Landlords did not return the security deposit to the Tenant within 15 days. The Commission looks to the factors in subsection 40(3) permitting the Landlord to retain the security deposit and there is no evidence that either of those factors apply in this situation. The Commission therefore finds that the Landlords failed to comply with the requirements of section 40 of the *Act* and therefore they must bear the consequences of non-compliance set out in subsection 40(4).
27. The Commission therefore dismisses this appeal as the evidence establishes that the Landlords failed to comply with the return of security deposit requirements set out clearly in section 40 of the *Act*. These requirements are firm and bind both the Rental Office and the Commission. The legislation provides no discretion to the Commission to waive the requirements. In cases such as this, the Landlord is liable for double the security deposit.
28. For the above reasons, and for the further reasons set out in Order LD24-370, which the Commission agrees with and adopts, this appeal is dismissed and Order LD24-370 is confirmed, subject to an updating of the interest owed on the original \$1,000.00 deposit by the Landlords to the Tenant.
29. As the security deposit had been paid in three payments over a period of time, Order LD24-370 had calculated interest for each period and then ordered a total of \$19.38 in interest on the security deposit of \$1,000.00 to the November 4, 2024 date of said Order. The total net sum payable by the Landlords to the Tenant in Order LD24-370 was \$1,886.89. To this amount, the Commission will add the additional sum of \$7.00 representing additional interest on the security deposit from November 5, 2024 to the date of the present Commission Order.
30. The Commission reminds landlords and tenants alike that they need to familiarize themselves with the *Act* to become aware of their rights and responsibilities. The law makes no exception for those who remain unaware. In particular, given the large number

of appeals which have come before the Commission where landlords were unaware of the return of security deposit provisions in section 40 of the *Act*, landlords need to be aware of the strict requirements and the financial consequences of non-compliance with that section.

G. CONCLUSION

31. The appeal is dismissed and Order LD24-370 is confirmed, subject to additional interest on the security deposit. The Landlords now owe the Tenant the net sum of \$1,886.89 plus an additional interest in the amount of \$7.00 for a total of \$1,893.89.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD24-370 is confirmed, subject to additional interest on the security deposit calculated to the issue date of this present Commission Order.
3. The Landlords must pay the Tenant the sum of \$1,893.89 by March 7, 2025.

DATED at Charlottetown, Prince Edward Island, 20th day of February, 2025.

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.