KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 190**

Date: **2024 10 31**
File No.: KBG-SA-01270-2024
Judicial Centre: Saskatoon

IN THE MATTER OF S. 72(1) OF *THE RESIDENTIAL TENANCIES ACT, 2006*

BETWEEN:

PAUL FERARO

APPELLANT/LANDLORD

- and -

MICHAEL BETHEL, MITCH BELLEFLEUR, JASON SNARR

RESPONDENTS/TENDANTS

- and -

THE OFFICE OF THE RESIDENTIAL TENANCIES

RESPONDENT

Counsel:

Paul Feraro	the appellant/landlord, on his own behalf
Michael Bethel	for the respondents/tenants
no one appearing	for the Office of the Residential Tenancies

JUDGMENT
October 31, 2024

R.S. SMITH J.

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[1] On September 11, 2024, a hearing officer of the Office of the Residential Tenancies [ORT], rendered a decision [*Decision*] directing the Landlord to pay to the Tenants the damage deposit that they had placed with him in the amount of $500, plus $50 costs.

[2] The Landlord takes umbrage with the *Decision*. He has appealed, arguing

that there was actual evidence of damage done to the rented premises and that this was missed by the Hearing Officer. The appeal is as contemplated by s. 72 of *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001 [*Act*].

[3] Section 72(1) reads:

> **72**(1) Subject to subsections (1.1) and (1.3), any person who is aggrieved by a decision or order of a hearing officer or the director, whether or not the decision or order is made without notice, may appeal the decision or order on a question of law or of jurisdiction to the Court of King's Bench within 30 days after the date on which the decision or order is signed and dated by a hearing officer.

[4] It is to be noted that the Court of King's Bench has limited jurisdiction in this matter. An appeal does not engage in a hearing *de novo* but rather the Court's review is restricted to issues involving errors in jurisdiction or errors in law.

Background

[5] The Tenants rented 226 Pichler Lane in Saskatoon. They vacated the property on May 31, 2024, at which point the Landlord held a $500 security deposit. The security deposit was not provided to the Tenants by the Landlord, nor was any written notice of claim by the Landlord claiming against the security deposit.

[6] The *Decision* of the Hearing Officer did not touch on nor did it turn on whether there was damage suffered by the Landlord. The *Decision*'s focus turned on a totally technical analysis involving the Landlord's obligation with respect to a security deposit. In short, the Landlord did not follow the rules about dealing with the security deposit.

[7] It is worthwhile to revisit those rules. Section 32(1) of the *Act* provides:

> **32**(1) Subject to subsection (5), within seven business days after the day on which a landlord has actual knowledge or should

> reasonably have known that a tenant has vacated the premises, the landlord shall:
>
> > (a) pay to the tenant the security deposit and any accrued interest; or
> >
> > (b) if the landlord intends to retain all or a portion of the security deposit and any accrued interest:
> >
> > > (i) pay to the tenant the portion of the security deposit that the landlord does not intend to retain and any accrued interest on that portion;
> > >
> > > (ii) subject to subsections (2) and (3), serve notice on the tenant, in the approved form, of the landlord's intention to retain all or a portion of the security deposit and any accrued interest; and
> > >
> > > (iii) continue to hold the security deposit, or the portion of the security deposit the landlord intends to retain, and any accrued interest in trust in accordance with section 28 for a period of 30 days from the day on which the tenancy ends.

[8] Section 32(1)(b) imposes an active obligation on a landlord to pay back the security deposit once the tenancy ends or to immediately (within 7 days) serve notice on the tenant of the landlord's intention to retain all or a portion of the security deposit.

[9] Our court has had an opportunity to address the security deposit rules and those reasons were quoted by the Hearing Officer at paragraph 7 of his *Decision*. He provided at paragraph 7:

> [7] As stated by Judge Dovell in *Elite Property Management Ltd. v. Justin Fontaine & Mychelle Racine* QBG 1881 of 2010, the Landlords have an "absolute duty" to comply with the security deposit procedures. In the case of *Reid-Woodson v. Turcotte* (2012 SKQB 314 (CanLII)) at paragraph 16, Mr. Justice Foley examined the security deposit procedures and concluded they are mandatory and a Landlord must comply. He stated:

> [16] … a landlord holds the security deposit in trust for the tenant. In short, it was, and remains, the tenant's property until the parties agree otherwise or a contrary order is made.
>
> [17] The Act provides a detailed code for the treatment of damage deposits and reflects the reality that the posting of a security deposit will usually represent a significant expenditure for most tenants. Consequently, the imposition of a short time frame after which the tenant is unconditionally entitled to either receive the damage deposit back or notice as to a dispute is both fair and justifiable. If there is to be a dispute over the deposit, either party can apply for its resolution. Where, however, as here, the landlord has not complied with his mandatory statutory obligations, the legislature has removed landlord's right to a continued claim of the tenant's deposit. The legislation does not prevent the landlord from subsequently advancing a claim for damages. It simply removed his right to hold the deposit as security.

[10] The *Act* provides serious consequences for the Landlord if he does not comply with s. 32(1)(b). Section 34(1) provides:

> **34**(1) If it is established to the satisfaction of a hearing officer that a landlord did not comply with clause 32(1)(b), the hearing officer, on being so satisfied, shall immediately order that:
>
> (a) the landlord pay to the tenant the security deposit, or the portion of the security deposit, and any accrued interest;
>
> …

[11] In the face of non-compliance by the Landlord of his obligations respecting the security deposit, the Hearing Officer, not surprisingly, ordered the Landlord to pay the $500 to the Tenants, along with $50, representing their application fee to the ORT.

[12] The *Decision* of the Hearing Officer is absolutely consonant with the

facts, the law and the *Act*. There is no error.

[13] I note, for the benefit of the Landlord, that if there is actually damages, he is not without remedy. The Hearing Officer specifically provided at paragraph 12 of his *Decision*:

> [12] The Landlord is free to apply to this officer for an order directing the Tenant to pay for the damages that it claims. This order does not in any way prejudice the validity of any such claims. However, the Landlord should be aware that s. 70(14) of the Act provides:
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> > **70**(14) The director may refuse to issue a written notice of hearing to, and a hearing officer may decline to make an order respecting, a landlord who:
> >
> > (a) is in contravention of an order made pursuant to this Act; or
> >
> > (b) has failed to forward a security deposit and any accrued interest to the director pursuant to section 33.

[14] It follows that the appeal is dismissed.

_____J.
R.S. SMITH