



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR18034  
Order LR18-35**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act filed by Bo-Hsuan Lan against  
Order LD18-266 dated August 23, 2018 issued  
by the Director of Residential Rental Property.

**BEFORE THE COMMISSION**

on Thursday, the 11th day of October, 2018.

John Broderick, Commissioner  
M. Douglas Clow, Vice-Chair  
Jean Tingley, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson  
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Commission Administrator  
Corporate Services and Appeals

**IN THE MATTER** of an appeal under Section 25 of the Rental of Residential Property Act filed by Bo-Hsuan Lan against Order LD18-266 dated August 23, 2018 issued by the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On August 28, 2018 the Commission received a Notice of Appeal from a lessor, Bo-Hsuan Lan (the “Appellant”), requesting an appeal of Order LD18-266 dated August 23, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on April 13, 2018 a lessee Yu Chang (Brian) Sheng (the “Respondent”) filed a Form 9 – Application re Determination of Security Deposit. Attached to the application was a Form 8 – Notice of Intention to Retain Security Deposit signed by the Appellant and dated April 12, 2018.

On April 17, 2018, the Acting Director of Residential Rental Property wrote to the Appellant to inform him of the requirement under Section 10.(9) of the **Rental of Residential Property Act** (the “Act”) and requesting that the security deposit be provided to her. On April 19, 2018 the Appellant provided the security deposit funds in the amount of \$1,000.00 to the Acting Director.

The matter was heard by the Director on August 13, 2018 and in Order LD18-266 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. The lessee shall receive the security deposit funds in the amount of \$1,000.00 currently held in trust by the Office of the Director of Residential Rental Property.*
- 2. Payment shall be made after the appropriate appeal period has expired.”*

The Commission heard the appeal on October 10, 2018. The Appellant was present at the hearing and was accompanied by Bo-Han Lan, who assisted the Appellant in making his presentation. The Respondent was also present at the hearing.

## EVIDENCE

The Appellant testified that the parties signed a rental agreement on May 2, 2017.

The Appellant testified that he first became aware of the Respondent's concerns on December 18, 2017. On December 23, 2017 a contractor looked at the problem. The Appellant was advised that work would be delayed as a result of the Christmas holidays. The work could be done January 13 and 14, 2018 however the Respondent refused to allow this. The work was performed in mid February 2018. The work included the installation of a bathroom vent fan, refinishing and painting of the ceiling and replacement of the bathtub and shower caulking.

The Appellant testified that after the Respondent vacated the unit cleaning needed to be done and a professional cleaner was hired to clean the carpets. The rest of the cleaning was performed by himself and his brother.

The Respondent testified that there were issues with moisture but in the spring summer and early autumn this could be dealt with by opening windows. He testified that he had mentioned this to the Appellant. He began to first notice more serious issues in November and provided photographs to the Appellant in December. The Respondent testified that he was out of the country for one month in early 2018 which is why he did not agree to have the work performed on January 13 and 14, 2018. The Respondent testified that he and his family cleaned the unit before they left. He sublet the unit to a third party, who requested that he hire a professional cleaner to provide a second cleaning. The Respondent acknowledged that he does not have receipts for this work. The Respondent disputes the Appellant's position that cleaning was required.

## **DECISION**

The appeal is allowed for the reasons that follow.

The evidence before the Commission suggest that communication issues were part of the problem. Moisture difficulties arose due to a lack of a bathroom ventilation fan. There was some delay in installing a ventilation fan and repairing the damage, including a one-month delay for which the Respondent was solely responsible. The Appellant supplied an invoice for repair work for the bathroom. Part of this invoice was for work to install a bathroom ventilation fan which should have been there in the first place. The other part of this invoice was for correcting the damage due to excess moisture. Unfortunately the invoice was not broken down into materials costs and labour was not apportioned between the addition of the fan and the repair of the damage.

With respect to the condition of the carpets and the cleanliness of the unit in general, the Appellant had a receipt for \$120.00 for his cleaner. The Respondent states he spent \$180.00 on cleaning but acknowledged that he has no receipt for his cleaner.

The Commission finds that the damage was caused equally by the actions and inactions of the parties. The Commission notes that the Director did not have the benefit of Exhibit E-17 which was filed with the Commission the day before the Commission's appeal hearing.

Of the \$1350.00 security deposit, \$350.00 was previously returned to the Respondent. At issue is the disposition of the remaining \$1000.00 of the security deposit now held in trust. The Commission finds that a further \$500.00 shall be paid to the Respondent and the Appellant shall receive the remaining \$500.00 of the security deposit.

**NOW THEREFORE**, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*

**IT IS ORDERED THAT**

1. The appeal is allowed.
2. The Respondent lessee shall receive \$500.00 from the security deposit funds currently held in trust by the Office of the Director of Residential Rental Property. The Appellant lessor shall receive the remaining \$500.00.
3. Both payments shall be made after the appropriate appeal period has expired.

**DATED** at Charlottetown, Prince Edward Island, this 11th day of **October**, 2018.

**BY THE COMMISSION:**

(sgd. John Broderick)

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John Broderick, Commissioner

(sgd. M. Douglas Clow)

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M. Douglas Clow, Vice-Chair

(sgd. Jean Tingley)

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Jean Tingley, Commissioner

## NOTICE

Sections 26.(2), 26.(3), 26.(4) and 26.(5) of the ***Rental of Residential Property Act*** provide as follows:

*26.(2) A lessor or lessee may, within fifteen days of the decision of the Commission, appeal to the court on a question of law only.*

*(3) The rules of court governing appeals apply to an appeal under subsection (2).*

*(4) Where the Commission has confirmed, reversed or varied an order of the Director and no appeal has been taken within the time specified in subsection (2), the lessor or lessee may file the order in the court.*

*(5) Where an order is filed pursuant to subsection (4), it may be enforced as if it were an order of the court.*

## NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141y-SFN(2009/11)