



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR19017  
Order LR19-13**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act filed by Hilchie Quality Rentals  
Inc. against Order LD19-096 dated March 22,  
2019 issued by the Director of Residential  
Rental Property.

**BEFORE THE COMMISSION**

on Monday, the 6th day of May, 2019.

John Broderick, Commissioner  
Jean Tingley, Commissioner

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# Order

Compared and Certified a True Copy

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

**IN THE MATTER** of an appeal under Section 25 of the Rental of Residential Property Act filed by Hilchie Quality Rentals Inc. against Order LD19-096 dated March 22, 2019 issued by the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On April 8, 2019 the Commission received a Notice of Appeal from a lessor, Hilchie Quality Rentals Inc. (the “Appellant”), requesting an appeal of Order LD19-096 dated March 22, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on September 4, 2018 a lessee, Ayman Abuelghate (the “Respondent”) filed with the Director a Form 9 – Application re Determination of Security Deposit to which was attached a Form 8 – Notice of Intention to Retain Security Deposit dated August 30, 2019.

The matter was heard by the Director on March 19, 2019 and in Order LD19-096 dated March 22, 2019 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. The lessor shall receive \$150.00 of the security deposit funds currently held in trust by the Director of Residential Rental Property.*
- 2. The lessee shall receive \$861.55 of the security deposit funds currently held in trust by the Director of Residential Rental Property.*
- 3. Payment to the parties shall be made after the appropriate appeal period has expired.”*

The Commission heard the appeal on May 6, 2019. The Appellant was represented by Martin and Donna Hilchie. The Respondent was also present.

## EVIDENCE

The Appellant’s representatives stated that the Respondent agreed to and signed an added term of the rental agreement and thus the Respondent loses his entire damage deposit as a result of adhesive damage to a wall.

The Appellant’s representatives also referred to handprints from a child on the walls in other rooms of the unit.

The Respondent acknowledges that he is responsible for the adhesive damage to the wall and he is ready to pay for the actual cost of the damage.

## DECISION

The appeal is denied and Director's Order LD19-096 is confirmed.

At the heart of this appeal is the following wording added to the rental agreement:

*“Absolutely no smoking. Absolutely no pets. Absolutely no adhesives on walls. Small nails or pins permitted. Any of above will result in loss of Damage Deposit.”*

This provision states “... loss of damage deposit.” It does not state loss of the entire security deposit.

The Appellant interprets this provision as allowing the lessor to retain the entire security deposit in the event of smoking, pets or the use of adhesives on the walls of the unit.

In the present appeal, the Respondent had fastened a mirror to a bedroom wall using adhesive. The Respondent removed the mirror and damage was done to the wall. The Respondent acknowledges responsibility for his actions and is willing to pay the cost of repairing the damage.

The Appellant provided an estimate to repair the wall and paint the bedroom. That estimate, of \$345.00, including HST, also included the painting of the walls of the living room, kitchen, hall and other bedroom. No separate estimate or invoice of the cost to repair and paint the one affected bedroom was provided. In the absence of such a separate estimate, the Director apportioned the sum of \$150.00 as the cost of repairing and painting the damaged bedroom wall.

The Appellant submits that the parties agreed to an added term of the rental agreement and that term entitles the Appellant to retain the entire security deposit. In effect, the Appellant is arguing freedom of contract. Black's Law Dictionary, 9<sup>th</sup> Edition, defines freedom of contract in part:

*The doctrine that people have the right to bind themselves legally; a judicial concept that contracts are based on mutual agreement and free choice, and thus should not be hampered by external control such as government interference.*

Subsection 9.(4) of the **Rental of Residential Property Act** (the “**Act**”) reads:

*Additional terms of rental agreement*

*9. (4) In addition to the statutory conditions, a lessor and lessee may provide in a rental agreement for other benefits and obligations that do not conflict with this Act or the provisions of the standard form.*

Section 6 of the **Act** sets the statutory conditions of the **Act**. Statutory condition 4 is germane to this appeal:

## STATUTORY CONDITIONS

### 6. Residential premises

*Notwithstanding any agreement, waiver, declaration or other statement to the contrary, where the relationship of lessor and lessee exists in respect of residential premises by virtue of this Act or otherwise, there shall be deemed to be a rental agreement between the lessor and lessee, with the following conditions applying as between the lessor and lessee as statutory conditions governing the residential premises:*

...

### 4. Obligation of the Lessee

*The lessee shall be responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by any wilful or negligent act of the lessee or of any person whom the lessee permits on the premises, but not for damage caused by normal wear and tear.*

Subsection 10.(5) of the **Act** reads:

#### *Retention from deposit to cover damage*

*10. (5) The lessor may retain all or part of a security deposit and interest thereon where he believes the lessee is liable to the lessor for damage to the residential premises caused by a breach of statutory condition 4, or for outstanding rent, provided that the lessor, within ten days of the date on which the lessee delivers up possession of the residential premises or such longer period as the Director may permit, serves the lessee with a notice of intention to retain security deposit in the form prescribed by regulation.*

A lessee is responsible for the repair of damage caused by the lessees' willful or negligent act. A lessor may retain all or part of the security deposit where the lessee is liable to the lessor for damage caused by a breach of statutory condition 4.

Simply put, the cost of rectifying the damage claimed may be claimed out of the security deposit. The **Act** makes no provision for allowing a lessor to provide himself exemplary or punitive damages. The lessor's interpretation of the provision added to the rental agreement conflicts with the **Act** and with statutory condition 4.

**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 denied.**
2. **Director's Order LD19-096 is confirmed.**

**DATED** at Charlottetown, Prince Edward Island, this **6th** day of **May, 2019**.

**BY THE COMMISSION:**

\_\_\_\_\_  
(sgd. John Broderick)

John Broderick, Commissioner

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(sgd. Jean Tingley)

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.*