



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR19033  
Order LR19-24**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act (the "Act") filed by Keith  
Nabuurs against Order LD19-259 dated June  
25, 2019 issued by the Director of Residential  
Rental Property.

**BEFORE THE COMMISSION**  
on Tuesday, the 20th day of August, 2019.

John Broderick, Commissioner  
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 (the "Act") filed by Keith Nabuurs against Order LD19-259 dated June 25, 2019 issued by the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On July 12, 2019 the Commission received a Notice of Appeal from a lessee, Keith Nabuurs (the "Appellant"), requesting an appeal of Order LD19-259 dated June 25, 2019 issued by the Director of Residential Rental Property (the "Director").

By way of background:

- (a) On January 29, 2019 the Appellant filed with the Director a Form 9 – Application re Determination of Security Deposit dated January 26, 2019 (the "Form 9").
- (b) On February 1, 2019 the Director wrote to the lessor, Nicholas MacLean Holdings Inc. (the "Respondent") enclosing a copy of the Form 9 and requesting that the Appellant forward the Form 8 – Notice of Intention to Retain Security Deposit pursuant to Sections 10.(5) of the **Act**.
- (c) On February 15, 2019 the Director received from the Respondent a Form 8 – Notice of Intention to Retain Security Deposit dated December 13, 2018 (the "Form 8").
- (d) On February 20, 2019 the Director forwarded the Form 8 to the Appellant and requested that he file a Form 9.
- (e) On February 27, 2019 the Director received from the Appellant an amended Form 9 – Application re Determination of Security Deposit dated February 25, 2019 (the "Amended Form 9").
- (f) On February 27, 2019 the Director wrote to the Respondent attaching a copy of the Amended Form 9 and requesting that the Appellant forward to her the security deposit funds, plus interest, pursuant to Section 10.(9) of the **Act**.
- (g) On June 4, 2019 the Director wrote to the Respondent's representative, Ground Floor Property Management requesting that the security deposit funds, plus interest, be forwarded pursuant to Section 10.(9) of the **Act**.
- (h) On June 20, 2019 the security deposit funds, plus interest, in the amount of \$822.65, were received by the Director from the Respondent's representative.

The matter was heard by the Director on June 11, 2019 and in Order LD19-259 dated June 25, 2019 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. The lessor shall receive the security deposit funds in the amount of \$822.65 currently held in trust by the Office of the Director of Residential Rental Property.*
- 2. Payment to the lessor shall be made after the appropriate appeal period has expired.”*

The Commission heard the appeal on August 13, 2019. The Appellant was present along with his former roommate Jaggar Acorn (“Mr. Acorn”). The Respondent was represented by Peter Doucette of Ground Floor Property Management (“Mr. Doucette”).

## **EVIDENCE**

The Appellant testified as to his efforts to arrange an inspection of the premises before moving out. He also testified as to his efforts to have a post-cleaning inspection done which were frustrated by an inability to reach Mr. Doucette. The Appellant submitted that if he had been advised further cleaning was necessary he would have had the additional cleaning done. The Appellant in particular questioned the need for two cleaning bills.

The Appellant testified that, when he and Mr. Acorn moved into the premises in 2016, the Respondent’s previous property manager did a walk-through inspection and noted the pre-existing damage to the flooring in the premises. The Appellant stated that when Mr. Doucette took over as property manager in May, 2017, he should have done a walk-through inspection but did not do this.

Mr. Acorn briefly testified filling in some details pertaining to the Appellant’s testimony.

Mr. Doucette testified that the premises were not adequately cleaned. He acknowledged that the Respondent routinely cleans all units as the cleanliness of a unit would otherwise not be sufficient for a new tenant moving in. He acknowledged, however, that only twice has a security deposit not been returned for that building. He advised that there were no records of any walk-through inspection in 2016. He stated that the previous property manager had notified the building owner about other pre-existing damage but not this particular floor damage. He felt that if he were a tenant and moved in to a unit he would take pictures of any pre-existing damage.

## **DECISION**

The appeal is allowed and Director’s Order LD19-259 is reversed.

In the application to retain the security deposit originally presented to the Director, the Respondent claimed \$1,245.17 for materials and labour for replacement of the kitchen floor. The Respondent also made claims for cleaning in the amount of \$225.00, carpet cleaning in the amount of \$75.00 and loss of rental income due to the time spent replacing the floor in the amount of \$300.00.

The Director in Order LD19-259 found that the Respondent had proven its claim with respect to the replacement of the kitchen floor but limited that claim to \$822.65 representing the total amount of the security deposit together with interest. As the total of this claim as validated by the Director equated to the security deposit plus interest, the Director found that there was no jurisdiction to rule on the claims for cleaning, carpet cleaning or loss of rent.

On appeal, with respect to the claim for flooring damage, the Respondent maintains that there was no pre-existing floor damage aside from some minor damage caused by the prior tenant. Therefore, the Respondent took the position that the flooring damage occurred during the Appellant's tenancy.

The Appellant and his then roommate Mr. Acorn testified before the Commission that the previous property manager was present with them for a walk-through inspection at the time they moved in to the premises in 2016 but Mr. Doucette was not present. The Appellant maintains that there was pre-existing damage to the kitchen floor and that damage was noted by the Respondent's previous property manager.

The Respondent did not present direct evidence from its owner or the previous property manager or provide photographs to establish the condition of the flooring at the time the Appellant and Mr. Acorn moved in.

The Commission finds the Appellant, Mr. Acorn and Mr. Doucette all to be credible witnesses. However, Mr. Doucette was not present when the tenancy began as he did not become property manager until the following year.

The Commission finds that the onus is on the Respondent to establish that the damage was caused during the tenancy of the Appellant and the Commission further finds that the Respondent has not satisfied the onus on the civil standard of the balance of probabilities.

Therefore, the Commission reverses the Director's findings on this point and finds that the Respondent's claim for flooring damage has not been proven.

As the flooring damage claim has been rejected, the other claims may now be considered.

With respect to the Respondent's claim for cleaning, the Commission notes the testimony of Mr. Doucette that a cleaning is always done for that building and yet security deposits are very seldom retained for that building. Thus, the Commission will not award a sum for the second cleaning as the Respondent routinely absorbs the cost of cleaning to achieve a very high standard of cleanliness.

However, the photographs reveal objective deficiencies in cleaning and thus the Commission will award the sum of \$143.75 for the initial cleaning work paid for by the Respondent.

As the Commission has rejected the flooring damage claim, the Commission rejects the \$300.00 claim for loss of rent due to replacing the floor.

The Commission finds that the claim for carpet cleaning in the amount of \$75.00 has not been supported by an invoice.

The Commission varies Director's Order LD19-259, allowing the Respondent to receive from the security deposit the sum of \$143.75 for the cost of the first cleaning. The balance of the security deposit, in the amount of \$678.90 shall be returned to the Appellant.

Payment of the funds shall occur following the expiry of the fifteen day appeal period set out in subsection 26.(2) of the *Rental of Residential Property Act*.

**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 and Director's Order LD19-259 is reversed.
2. The Respondent Nicholas MacLean Holdings Inc. shall receive the sum of \$143.75 from the funds in trust (the funds in trust being defined as the security deposit together with interest in the total amount of \$822.65, currently held in trust by the Office of the Director of Residential Rental Property).
3. The Appellant shall receive the remainder of the funds in trust, specifically \$678.90.
4. Payment of the funds shall occur following the expiry of the appeal period.

**DATED** at Charlottetown, Prince Edward Island, this **20th** day of **August**, 2019.

**BY THE COMMISSION:**

(sgd. John Broderick)

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John Broderick, Commissioner

(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.*