



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR19044  
Order LR19-34**

**IN THE MATTER** of an appeal filed  
under Section 25 of the Rental of Residential  
Property Act (the "Act") filed by Steve A. Vos  
against Order LD19-310 dated July 19, 2019  
and issued by the Office of the Director of  
Residential Rental Property.

**BEFORE THE COMMISSION**

on Monday, the 23rd day of September, 2019.

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

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# Order

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On August 7, 2019 the Commission received a Notice of Appeal from a lessor, Steve A. Vos, (the "Appellant"), requesting an appeal of Order LD19-310 dated July 19, 2019 issued by the Director of Residential Rental Property (the "Director").

By way of background:

- (a) On March 6, 2019 a lessee, Alison MacKinnon (now known as Alison Gamble) (the "Respondent") filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking a finding that the security deposit, or part thereof, should be forfeited or returned and an order that an amount found to be owed be paid (the "Form 2").
- (b) On March 12, 2019 the Director wrote to the Appellant enclosing a copy of the Form 2 and requesting that the Appellant forward the Notice of Intention to Retain Security Deposit ("Form 8") pursuant to Sections 10.(4) and 10.(5) of the **Act**.
- (c) On June 24, 2019 the Director again wrote to the Appellant requesting that he respond to the Respondent's Form 2 and provide her Office with the Form 8 pursuant to the **Act**.

The matter was heard by the Director on July 16, 2019 and in Order LD19-310 dated July 19, 2019 the Director ordered:

***"IT IS THEREFORE ORDERED THAT***

1. *The lessor shall pay to the lessee the sum of \$611.60 on or before August 12, 2019."*

The Commission heard the appeal on September 19, 2019. The Appellant was present. The Respondent was also present and was accompanied by Ross Gamble.

## EVIDENCE

The Appellant testified that the premises had just been extensively renovated when the tenancy commenced with the Respondent in March 2017. He allowed her to pay the security deposit in installments and the full security deposit was not paid.

The Appellant testified that the Respondent gave her notice to terminate the rental agreement in January 2019 and moved out in February 2019. The Appellant then did an inspection and found more damage than expected from ordinary wear and tear. He identified specific damage in his testimony. He submitted that he should not have to repaint an entire unit or replace a range top after a brief tenancy.

The Appellant acknowledged that he did not submit the proper form as he was just returning from outside the Province but he did communicate with the Respondent. He testified that he did not think it necessary to file the Form 8 after the Form 2 had been filed by the Respondent. He acknowledged that he had not turned in the security deposit but undertook to do so immediately after the hearing before the Commission.

The Respondent testified that she got along with the Appellant fairly well during the tenancy. She stated that she ran a daycare out of the premises as well as living there. She acknowledged that she did not pay the full security deposit but provided documentation to establish that she paid \$700.00 towards the security deposit.

## Decision

The appeal is denied and Director's Order LD19-310 is confirmed, subject to a variance based on the additional \$100.00 payment towards the security deposit plus interest, to a total sum of \$712.95.

The Commission notes that the Appellant did pay the sum of \$712.95 in trust immediately following the hearing.

The photographs filed in evidence before the Commission were of a very poor quality with small, black and white photocopied images. Nonetheless, the evidence before the Commission suggests that some damage did in fact occur beyond ordinary wear and tear for a nearly two-year tenancy.

On two occasions, the Director wrote the Appellant requesting that he file a Form 8. Unfortunately for the Appellant, he failed to file the Form 8.

Section 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.*

Emphasis added.

Simply put, to retain a security deposit, a lessor must serve the lessee with the notice of intention to retain the security deposit in the form prescribed by regulation. This is not a requirement set by the Director or the Commission. It is a requirement set by the Legislative Assembly of Prince Edward Island.

While a lessor is ordinarily required to file such document within 10 days of a lessee giving up possession, the Legislative Assembly has granted the Director discretion (“such longer period as the Director may permit”) to extend the time to file the form. The letters from the Director to the Appellant (March 12, 2019 and June 24, 2019) requesting the filing of the Form 8 make it apparent that the Director was willing to permit a longer period.

Section 10. of the **Rental of Residential Property Act Regulations** reads:

*SECURITY DEPOSITS*

*10. Notice of intention to retain deposit*

*A notice of intention to retain all or a portion of a security deposit, pursuant to subsection 10(5) of the Act, shall be in Form 8. (EC10/89)*

The Form 8 document is then actually attached to the **Regulations**. The Form 8 is not a document created by the Director or the Commission: rather, it is a document established by the Executive Council for Prince Edward Island.

Thus, the requirement (for a lessor seeking to claim all or part of a security deposit) to file a Form 8 is not a matter of administrative red tape or the Director being difficult or inflexible. It is a legal requirement set out in the **Act** and the exact form is set out in the **Regulations** made under the **Act**.

As the Appellant did not file a Form 8 with the Director or the Commission, the Appellant may not retain all or part 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 denied.**
2. **Director’s Order LD19-310 is confirmed, subject to a variance in the sum to \$712.95.**
3. **Payment of the sum of \$712.95 (currently held in trust) to the Respondent Alison Gamble, shall occur following the expiry of the fifteen day appeal period.**

**DATED** at Charlottetown, Prince Edward Island, this **23rd** day of **September, 2019**.

**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.*