



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19061
Order LR19-41**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Laura Lee Harding against Orders LD19-422 and LD19-423 both dated September 17, 2019 and issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Wednesday, the 20th day of November, 2019.

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

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Laura Lee Harding against Orders LD19-422 and LD19-423 both dated September 17, 2019 and issued by the Office of the Director of Residential Rental Property.

Order

On October 10, 2019 the Commission received a Notice of Appeal from a lessor, Laura Lee Harding (the "Appellant"), requesting an appeal of Orders LD19-422 and LD19-423 dated September 17, 2019 issued by the Director of Residential Rental Property (the "Director").

ORDER LD19-422

By way of background:

- (a) On June 12, 2019 two lessees, Mohamad Khaled Alnaeli and Ghalia Dukmak (the "Respondents") filed with the Director a Form 9 – Application re Determination of Security Deposit dated February 18, 2018 to which was attached a Form 8 – Notice of Intention to Retain Security Deposit signed by the Appellant dated February 13, 2018.
- (b) On June 14, 2019 the Director wrote to the Appellant enclosing a copy of the Form 9 and requested that the Appellant forward to her the security deposit funds, plus interest, in the amount of \$2,224.15.
- (c) On July 17, 2019 the Director again wrote to the Appellant requesting that she forward to her the security deposits funds, plus interest.

The matter was heard by the Director on August 27, 2019 and in Order LD19-422 dated September 17, 2019 the Director ordered:

"IT IS THEREFORE ORDERED THAT

1. *The lessor is entitled to retain a total of \$1,293.66 of the lessees' security deposit.*
2. *The lessor shall pay the remainder of the security deposit funds plus interest in the amount of \$930.49 to the lessees on or before October 17, 2019."*

ORDER LD19-423

By way of background on April 12, 2018 the Appellant filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seek a finding that rent is owed; a finding that the security deposit, or part thereof, should be forfeited or returned; and an order that an amount found to be owed by paid.

The matter was heard by the Director on August 27, 2019 and in Order LD19-423 dated September 17, 2019 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessor’s claim for return of rent is denied.”*

The Commission heard the appeal on November 15, 2019. The Appellant was present. The Respondent Mohamad Khaled Alnaeli (“Mr. Alnaeli”) participated by telephone conference call.

EVIDENCE

The Appellant testified that the Respondent’s caused damage to the residential premises. She acknowledged that the Respondents did pay the Appellant’s handyman to repair some of the damage. Other damage was not repaired and she claims reimbursement for this damage from the security deposit. She maintains that the amount of damage exceeds the security deposit.

The Appellant presented an invoice (part of Exhibit E-26) for a granite counter top which was supplied and installed for the sum of \$2,737.00.

The Appellant also explained that she had become aware of noise issues which were disturbing the occupants of the apartment unit located in the basement of the residential premises. The Appellant lived in the basement apartment for ten days in December 2017 and repeatedly brought her noise concerns to the attention of the Respondents.

The Appellant and the Respondents entered into a new rental agreement of three months duration, commencing January 1, 2018 and ending March 31, 2018. The Appellant testified that the Respondents advised her in January 2018 that they were moving out of the residential premises at the end of January 2018.

The Appellant testified that she attempted to mitigate her losses by re-renting the residential premises providing Kijiji and Airbnb documentation (part of Exhibit E-26) to provide evidentiary support for her mitigation efforts.

The Appellant seeks to retain the entire security deposit with interest in the amount of \$2,224.15. The Appellant also seeks unpaid rent for the months of February and March, 2018 totalling \$4400.00.

Mr. Alnaeli testified that the Respondents were misled and believed that they were renting a fully furnished home without any other tenant in the building. The other tenant never complained to them about noise issues. The Respondents first became aware of a noise complaint when the Appellant told them in December 2017. The Appellant kept mentioning about the noise and told them that if it did not stop she would give them an eviction notice. The Respondents then decided in January 2018 to find another rental house for themselves and their children.

Mr. Alnaeli testified that the Respondents tried to arrange a walk-through with the Appellant but were unsuccessful doing so. Mr. Alnaeli stated that the walk-through would have allowed the Respondents to identify and repair the remaining unrepaired damages.

DECISION

The appeal is allowed. Director's Order LD19-422 is varied. Director's Order LD19-423 is reversed.

The Commission notes that additional documentation was filed with the appeal which was not available to the Director. Thus, the Director did not have the benefit of such information when issuing both Orders.

Director's Order LD19-422 (security deposit)

Exhibit E-26, which was filed by the Appellant after she filed her appeal, provides proof that the damaged countertop was actually replaced. The replacement of a mid-range laminate countertop with a granite countertop constitutes an upgrade and the cost of upgrading the countertop cannot be claimed from the security deposit. However, Exhibit E-13 offers a quote of the cost to replace the mid-range laminate counter top in the residential premises as "\$1600.00 plus HST". Taking Exhibits E-13 and E-26 together, the Commission is satisfied that the replacement of the countertop advances the Appellant's damage claim sufficiently as to be able to retain the entire security deposit with interest in the amount of \$2,224.15.

Accordingly, the Commission varies Director's Order LD19-422 and the Appellant may retain the entire security deposit.

Director's Order LD19-422 (rent owing)

Exhibit E-8 contains a rental agreement dated December 31, 2017 effective January 1, 2018 to March 31, 2018. This rental agreement was signed by the Respondents and the Appellant. The Respondents initially gave the Appellant less than 30 days written notice. The Respondents paid their January 2018 rent, moved out at the end of January but did not pay for the months of February and March 2018.

The Appellant is required to attempt to mitigate the lost rent for February and March 2018. Exhibit E-26 suggests that she placed an advertisement in Kijiji and provides clearer evidence that she attempted short term rentals through Airbnb. The Respondents provided a email dated January 21, 2018 from the Appellant whereby the Appellant declined a possible new tenant on the basis that she wished to increase the rent from \$2200.00 per month to \$2500.00 per month (part of Exhibit E-22). There is no evidence that the Appellant had received approval for such increase from the Director.

The Commission finds that the Appellant's mitigation efforts were minimal. The Respondents, in a January 16, 2018 email (part of Exhibit E-22) provided one month's notice, noting that they were leaving the house at the end of January 2018 and acknowledging:

This means our last day in lease is end of February 2018.

Taken together, the Appellant's partial mitigation efforts combined with a written acknowledgement by the Respondents, the Commission finds that the Respondents are required to pay rent in the amount of \$2200.00 for the month of February 2018 and accordingly, Director's Order LD19-423 is reversed.

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

IT IS ORDERED THAT

1. Director's Order LD19-422 is varied.
2. The Appellant (lessor) is entitled to retain the entire amount of the Respondents' (lessees') security deposit, together with interest, calculated to be \$2,224.15.
3. Director's Order LD19-423 is reversed.
4. The Appellant's claim for return of rent is allowed in part, representing a claim for one month's rent for February 2018.
5. The Respondents shall pay the sum of \$2200.00 to the Appellant on or before December 31, 2019.

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

BY THE COMMISSION:

(sgd. John Broderick)
John Broderick, Commissioner

(sgd. M. Douglas Clow)
M. Douglas Clow, Vice-Chair

(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.