



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR19075  
Order LR20-06**

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Shawna Sheridan against Order LD19-519 dated December 10, 2019 issued by the Office of the Director of Residential Rental Property.

**BEFORE THE COMMISSION**  
on Friday, the 21st day of February, 2020.

Erin T. Mitchell, Commissioner  
M. Douglas Clow, Vice-Chair

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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 filed under Section 25 of the Rental of Residential Property Act (the "Act") by Shawna Sheridan against Order LD19-519 dated December 10, 2019 issued by the Office of the Director of Residential Rental Property.

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# Order

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On December 20, 2019 the Commission received a Notice of Appeal from a lessor, Shawna Sheridan (the "Appellant"), requesting an appeal of Order LD19-519 dated December 10, 2019 issued by the Director of Residential Rental Property (the "Director").

By way of background:

- (a) On November 13, 2019 two lessees, Kiran Krishna Kumar ("Mr. Kumar") and Alwin Shibu Lukose ("Mr. Lukose") (collectively the "Respondents") 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 signed by the Appellant dated November 12, 2019.
- (b) On November 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 \$1,101.95.
- (c) On November 25, 2019 the Appellant paid the security deposit, plus interest, in the amount of \$1,101.95 to the Director.

The matter was heard by the Director on December 6, 2019 and in Order LD19-519 dated December 10, 2019 the Director ordered:

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

1. *The lessees shall receive the security deposit in the amount of \$957.23 currently held in trust by the Office of the Director of Residential Rental Property.*
2. *The lessor shall receive the security deposit in the amount of \$144.72 currently held in trust by the Office of the Director of Residential Rental Property.*
3. *Payment to the lessees shall be made after the appropriate appeal period has expired."*

The Commission heard the appeal on February 10, 2020. The Appellant was present. The Respondents were also present.

## EVIDENCE

In her comments, the Appellant reviewed Director's Order LD19-519, identifying alleged inaccuracies in the recounting of testimony and stating that she believed there were errors in fact finding.

The Appellant's lengthy testimony before the Commission was recorded and the recording forms an essential part of the record of this appeal.

The Appellant testified that, as a licensed tourism operator, she has very high standards. She emphasized that the Respondents did not rent an entire unit; rather, they shared a house with others.

The Appellant testified that the Respondents would arrive home in the early hours of the morning, wake her up and leave the lights on. The Appellant testified that her son removed the codes to the electronic locks because the Respondents kept coming in at all hours and was disturbing her "quiet enjoyment". The Appellant testified that she started sleeping on the sofa to give them a hint about not making noise when they came home in the wee hours of the morning. The Appellant testified that she never slept in the hallway.

The Appellant testified that the Respondents splashed water all over the bathroom and she would have to dry the bathroom floor.

The Appellant testified that she requested that the Respondents not cook with curry as she had an allergy to curry.

The Appellant maintained that the damaged items were not pre-existing and were caused by the negligent and careless acts of the Respondents rather than normal wear and tear.

The Respondents testified that the Appellant's regular presence in the common areas made them uncomfortable cleaning these areas.

Mr. Kumar testified that he "clocks out" from work at 2:00 a.m. He would come home and the Appellant would switch off lights that he had turned on. She told him that she would call the police.

The Respondents testified that in addition to the Respondents and two other tenants staying at the premises, there would at various times be others staying there: the Appellant, her son or an Airbnb guest.

Mr. Kumar stated that the Appellant made false accusations which were unfair. He also stated that the damaged items were either due to pre-existing damage or ordinary wear and tear.

The Respondents provided 12 pictures ("Exhibit E-21") to demonstrate that they left the premises clean when they moved out on October 31, 2019.

## DECISION

The Commission denies the appeal and confirms Director's Order LD19-519.

Section 10 of the Act addresses security deposits. Subsections 10.(5), 10.(7) and 10.(10) read:

*Retention from deposit to cover damage*

*(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.*

...

*Application for determination by Director*

*(7) A lessee served with a notice under subsection (5) may, within fifteen days of the date of service or such longer period as the Director may permit, apply to the Director in the form prescribed by regulation for a determination on the disposition of the security deposit, in which case he shall serve a copy of the application on the lessor.*

...

*Determination*

*(10) The Director shall investigate all applications made pursuant to subsection (7) and make such determination with respect to them in such manner as he deems appropriate and just.*

Emphasis added.

Section 6 of the Act, Statutory Condition 4 reads:

*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.*

Emphasis added.

In order to establish whether a security deposit may be retained for repair of claimed damage, several factors must be established:

- The claimed damage must have been caused by a wilful or negligent act.
- The claimed damage must have been caused by the lessee or someone she or he permits on the premises.
- The claimed damage must exceed damage caused by normal wear and tear.

The onus to establish these factors lies on the lessor, as it is the lessor who asserts that the lessee is responsible for the damage.

With respect to ordinary cleanliness, the lessor also bears the onus of establishing that interior of the premises failed to meet ordinary standards.

There is no evidence before the Commission that the Appellant conducted a walk-through inspection with the Respondents before they moved in. Such an inspection is a common practice with residential tenancies and allows landlord and tenant to note and itemize any existing damage before the tenancy begins. This provides a helpful reference point to determine the nature and extent of any damage occurring during a tenancy. The lack of a walk-through inspection at the start of a tenancy makes it difficult to objectively assess whether damage occurred during the tenancy or whether such damage was pre-existing.

The Commission finds that the damage within the Respondents' room falls within the sphere of ordinary wear and tear rather than a wilful or negligent act.

During the tenancy the Appellant, her son, two other tenants and at least one Airbnb guest were living at various times within the home and had access to the common areas. This makes it difficult to establish that it was the Respondents that were the sole cause of such common area damage.

With respect to the matter of ordinary cleanliness, the Commission finds that the Appellant has very high standards of cleanliness. The Commission finds that the standards of the Respondents, demonstrated by the 12 photographs provided in Exhibit E-21, demonstrate that the Respondents had achieved the standards of ordinary cleanliness.

**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 LR19-519 is upheld.**

**DATED** at Charlottetown, Prince Edward Island, this **21st** day of **February**, 2020.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

## 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.*