



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20004
Order LR20-08**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Jeremiah Henderson and
Camryn Arsenault against Order LD20-018
dated January 15, 2020 issued by the Director
of Residential Rental Property.

BEFORE THE COMMISSION
on Tuesday, the 3rd day of March, 2020.

Erin T. Mitchell, Commissioner
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 under Section 25 of the Rental of Residential Property Act filed by Jeremiah Henderson and Camryn Arsenault against Order LD20-018 dated January 15, 2020 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On February 3, 2020 the Commission received a Notice of Appeal from a lessee, Jeremiah Henderson (“Mr. Henderson”) on behalf of himself and another lessee, Camryn Arsenault (collectively the “Appellants”), requesting an appeal of Order LD20-018 dated January 15, 2020 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on October 28, 2019 the Appellants filed with the Director a Form 9 – Application re Determination of Security Deposit. Attached to the application was a Form 8 – Notice of Intention to Retain Security Deposit signed by a lessor, Jocelyn Anderson (“Mrs. Anderson”) on behalf of herself and another lessor, Wayne Anderson (“Mr. Anderson”) (collectively the “Respondents”) dated October 15, 2019.

On October 20, 2019, the Director of Residential Rental Property wrote to the Respondents to inform them of the requirement under Section 10(9) of the **Rental of Residential Property Act** (the “Act”) and requesting that the security deposit, plus interest, be provided to her. On November 6, 2019 the Respondents provided the security deposit funds, plus interest, in the amount of \$358.60 to the Director.

The matter was heard by the Director on December 13, 2019 and in Order LD20-018 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall receive the security deposit funds in the amount of \$358.60 held in trust by the Office of the Director of Residential Rental Property.*
- 2. Payment to the lessors shall be made after the appropriate appeal period has expired.”*

The Commission heard the appeal on March 2, 2020. The Appellants were represented by Mr. Henderson who was accompanied by Cindy Warren (“Ms. Warren”), who assisted the Appellant in making his presentation. Mrs. Anderson was present representing the Respondents.

EVIDENCE

Ms. Warren stated that Mr. Henderson had lived in the apartment for two years and that marks on the floor were there when he moved in. Ms. Warren testified that she cleaned the apartment in 2017 when Mr. Henderson moved in and cleaned the apartment when he moved out in September 2019. Ms. Warren testified that she took a video after she cleaned the apartment in September 2019. Ms. Warren testified that there was no green stain on the floor.

Ms. Warren testified that she asked Mr. Anderson to do a walk-through of the apartment and he refused to do so. She also asked him on September 29th 2019 if she could put a few things, including the sofa, outside, as the weather was sunny and they could be picked up before the end of the month. She stated that Mr. Anderson said no, so these items were left in the apartment.

Mr. Henderson testified that the window locks were broken before he rented the apartment. He testified that Mr. Anderson had locked him out and had placed wooden sticks in the windows to keep him from getting in. Mr. Henderson testified that he had installed a new lock, gave one key to Mr. Anderson and then gave the remaining key to the Respondents when he moved out. Mr. Henderson also stated that the unit was rented to an acquaintance of his, who confirmed that the flooring has not been replaced.

Mrs. Anderson testified that the locks were broken on the windows and the batteries were removed from the smoke detectors. She also testified that the Respondents did not get a key back. She testified that there was dirt on the cupboards and the floor was sticky from a “buildup”.

Mrs. Anderson acknowledged that the floor has not yet been replaced as they are hoping to find someone to repair the floor. She confirmed that the unit is rented by a new tenant.

Mrs. Anderson stated that the Respondent’s claim was based on overall lack of cleanliness, damage to flooring and missing keys.

DECISION

The Commission allows the appeal and reverses Director’s Order LD20-018.

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 the interior of the premises failed to meet ordinary standards.

The Commission has viewed the video presented by the Appellants. Given the poor quality of the photographs in evidence, the Commission finds that the video provides the best evidence of the condition of the apartment shortly before possession was surrendered to the Respondents. From that video, the Commission finds that the ordinary standards of cleanliness have been met.

With respect to the alleged damage to the floors, the Commission is mindful that the Respondents refused to agree to do a walk-through with the Appellants.

A lessor is best able to satisfy the onus when lessor and lessee do a well documented inspection before the lessee moves in and just after the lessee moves out.

The Respondents have provided a photograph of a green stain on the floor taken after the Respondents cleaned the unit. No such green stain is visible in the video presented by the Appellants. This video does not show any other damage to the floors of the apartment.

The Commission is also mindful of the testimony of Mrs. Anderson that the floor has not been replaced or repaired as yet.

The Commission finds that the Respondents have not met the onus of establishing damage exceeding normal wear and tear caused by a wilful or negligent act of the Appellants or persons permitted in the apartment by them.

For the above reasons the Commission allows the appeal, reverses Director's Order LD20-018 and orders payment of the sum of \$358.60, representing the security deposit together with interest, to the Appellants (lessees) from the security funds held in trust. Payment to the Appellants shall be made after the expiry of the appeal period.

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 LD20-018 is reversed.**
2. **The Appellants (lessees) shall receive the security deposit funds of \$358.60 held in trust by the Office of the Director of Residential Rental Property.**
3. **Payment to the Appellants shall be made after the expiry of the appeal period.**

DATED at Charlottetown, Prince Edward Island, this **3rd** day of **March, 2020**.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Commissioner

(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.