



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR21007
Order LR21-08**

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by Shannon Rix against Order LD21-063 dated February 24, 2021, issued by the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Wednesday, the 31st day of March, 2021.

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

Order

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by Shannon Rix against Order LD21-063 dated February 24, 2021, issued by the Director of Residential Rental Property.

Order

This appeal asks the question of whether a landlord is permitted to retain all, or a portion, of a tenant's security deposit for unpaid rent.

Background

The Appellant, Shannon Rix ("Mr. Rix"), rented an apartment from the Respondents, Mazen Al Mayaleh and Norma Kassoha ("Ms. Kassoha") collectively (the "Landlords") located at 159 Water Street, Apartment #2, Charlottetown, PE (the "Premises"). Mr. Rix moved into the Premises in November, 2019. A security deposit of \$725 was paid to the Landlords.

Mr. Rix vacated the Premises on December 29, 2020. He acknowledged on appeal that he did not pay any rent for the month of December, 2020.

On January 21, 2021, the representative of the Landlords, Mr. Mayaleh, gave Mr. Rix a Notice of Intention to Retain Security Deposit ("Form 8"), which stated that Landlords would be retaining the full security deposit for unpaid rent for the month of December, 2020.

On January 21, 2021, Mr. Rix filed with the Director of Residential Rental Property (the "Director") a Form 9 – Application re Determination of Security Deposit dated the same date.

The Director heard the matter on February 24, 2021, and in Order LD21-063 ordered that the Landlords shall retain \$701.61 of the security deposit funds and the Landlords are pay Mr. Rix the sum of \$31.84 on or before March 24, 2021.

Mr. Rix appealed.

The Commission heard the appeal on March 29, 2021, via telephone conference call. Mr. Rix participated by telephone conference call. The Landlords were represented by Michel Al-Mayaleh and Rachel Al-Mayaleh, who also participated by telephone conference call.

Disposition

The appeal is denied.

The Issues

Mr. Rix argued on appeal that the Form 8 was not served within 10 days of his having vacated the Premises, as is required by section 10(5) of the Act, and as such the Landlords were not entitled to retain the security deposit. He also appealed on the basis that that it was Michel Al-Mayaleh, and not the Landlords personally, who served the Form 8.

The Commission must therefore determine:

- a) whether the service of the Form 8 on January 21, 2021 was outside of the notice period prescribed by the Act, and
- b) whether service by the Landlord's representative invalidates the Form 8.

Analysis

Notice Period

In support of his appeal, Mr. Rix submitted two emails addressed to him from the Tenant Support Centre (Exhibit E-2), which is a project of Community Legal Information. The first reads as follows:

Hi Shannon,

The 10 day window for the landlord to notify a tenant about their intention to keep or return the security deposit begins on that (sic) the tenant has to leave the rental property.

For example, if a tenant has to be out of the unity (sic) on the 29th of December 2020, then their landlord must either serve them a Form 8 or return their deposit (plus interest) by the 8th of January 2021.

I hope this helps! Please let me know if you have any other questions.

All the best,

*David McQuillan (pronouns: he/him/his)
Tenant Support Worker*

The second email reads as follows:

Hello Shannon,

Thank you for your email.

*If a landlord wants to keep a tenant's damage deposit **for any reason**, then they must fill out a Form 8 – Notice of Intention to Retain Security Deposit within 10 days of the end of the rental agreement. If the landlord intends to keep the security deposit because the tenant has not paid their rent, then the landlord should state on the Form 8 that they are keeping the deposit to cover the tenant's unpaid rent.*

I hope this helps! If you have any other questions you can reach me by responding to this email or by calling 902.940.5368.

Best wishes,

*David McQuillan (pronouns: he/him/his)
Tenant Support Worker*

[Emphasis original]

Section 10(5) of the Act reads as follows:

(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.

[Emphases added]

The legislature has explicitly given authority to the Director to extend the time within which a lessor may serve a Form 8. This fact was, unfortunately, not communicated by the Tenant Support Centre to Mr. Rix.

Mr. Rix does not dispute that he owes the Landlords rent for the month of December 2021. The Director held that it was appropriate to extend the 10-day notice period and found that rent for December 2020 was indeed owing.

The Commission confirms that the Director had authority to extend the 10-day notice period, and did so appropriately in this case. The Commission also confirms the finding that rent was owed.

Service of Form 8

Mr. Rix argued that the Form 8 was invalid as it was not served upon him by the Landlords.

Section 1(h) of the Act defines “lessor” as follows:

(h) “lessor” means the owner or other person permitting the occupation, pursuant to a rental agreement, of residential premises and includes his heirs, assigns, personal representatives and successors in title;

[Emphasis added]

The Act permits for personal representatives to act on behalf of the lessor. In this case, Michel Al-Mayaleh and Rachel Al-Mayaleh confirmed that they were acting on behalf of the Landlords, both in serving the Form 8 and in the appeal.

The Commission accepts that the Landlords were represented by Michel Al-Mayaleh when the Form 8 was served, and that the Form 8 was and is valid.

For these above reasons, the Commission dismisses the appeal.

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 dismissed and Order LD 21-063 is hereby confirmed.**

DATED at Charlottetown, Prince Edward Island, this **31st day of March, 2021.**

BY THE COMMISSION:

Erin T. Mitchell, Panel Chair &
Commissioner

M. Douglas Clow, Vice-Chair

NOTICE

Subsections 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.