



**Date Issued:** August 31, 2023  
**Docket:** LR23059  
**Type:** Rental Appeal

INDEXED AS: Tanya Burke v. Zheng Liang Hu

Order No: LR23-48

**BETWEEN:**

Tanya Burke

**Appellant**

**AND:**

Zheng Liang Hu

**Respondent**

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## ORDER

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Panel Members:

M. Douglas Clow, Vice-Chair  
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

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Commission Administrator  
Corporate Services and Appeals

## **1. INTRODUCTION**

1. This appeal was heard by the Commission on August 24, 2023 and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in denying both a tenant’s application for a return of a security deposit and an application for compensation for a bad faith eviction.

## **2. BACKGROUND**

2. On May 1, 2021, Tanya Burke (the “Tenant”) entered into a rental agreement for the premises located at 18A Douglas Street, Charlottetown, PE (the “Premises”) with Zheng Liang Hu (the “Landlord”). Rent for the Premises was \$1,250.00 per month with a security deposit paid of \$1,250.00.
3. The Tenant vacated the Premises on January 31, 2023, pursuant to Rental Office Order LD23-018 and Commission Order LR23-05. Commission Order LR23-05 also ordered the Tenant to pay the Landlord \$2,886.90 in outstanding rent.
4. On April 19, 2023 the Tenant filed a Tenant Application (the “Application”) to Determine Dispute (Form 2A) with the Rental Office. The Application sought both a return of a security deposit and compensation for a bad faith eviction.
5. The Tenant’s Application was heard by the Rental Office on June 21, 2023. The Rental Office denied the Tenant’s Application in Order LD23-313 dated July, 2023.
6. On July 27, 2023 the Tenant filed an appeal with the Commission.
7. On August 24, 2023 the Commission heard the appeal by way of telephone conference hearing. The Tenant participated along with her witnesses Tracey Gilbert (“Ms. Gilbert”) and Beverly Blackett (“Ms. Blackett”). The Landlord was represented by Bing Wang (“Ms. Wang”) who was accompanied by the Property Manager, Ming Zhang (“Ms. Zhang”).

## **3. DISPOSITION**

8. The appeal is dismissed and Order LD23-313 is confirmed.

## **4. ANALYSIS**

9. The Tenant testified that she was evicted because the owner of the Premises was going to move in but nobody moved into the Premises until May 2023. The Tenant testified that she paid \$2900.00 in cash on January 30, 2023 and thus there is no outstanding rent. The Tenant submitted that since there is no outstanding rent, her security deposit of \$1,250.00 should be returned to her.
10. Ms. Gilbert testified that she was present with the Tenant on January 30, 2023. She testified that she then left about an hour before the Tenant paid the outstanding rent.

11. Ms. Blackett testified that she was there with the Tenant and the U-Haul truck. Ms. Blackett testified that the Tenant ran up to the Credit Union to get cash. Ms. Blackett testified that she was present when the Tenant paid the outstanding rent. She stated that “they” (Landlord’s representatives) blocked the U-Haul and did not have a receipt book with them.

12. Ms. Wang and Ms. Zhang both testified that they did not receive rent.

13. With respect to whether rental arrears of approximately \$2900.00 were paid on January 30, or possibly January 31, 2023; the Commission finds that two people have testified it was paid, the Tenant and Ms. Blackett, while two people testified it was not paid, Ms. Wang and Ms. Zhang. Ms. Blackett’s testimony is that the Tenant went to the Credit Union to get the \$2900.00 cash. Given that this issue was in contention before the Rental Office and Order LD23-313 found that the rental arrears were not paid, it was incumbent on the Tenant to provide the Commission with her best evidence on appeal. Had the oral testimony of the Tenant and Ms. Blackett been supported by an account statement from the Credit Union showing a withdrawal of \$2900.00 on January 30, 2023 or possibly January 31, 2023, the Tenant’s position on the payment of rental arrears would have been more compelling. Such evidence could have been easily obtained, but it was not and accordingly the Commission finds that the rental arrears of \$2,886.90 remain outstanding, and thus the Landlord is justified in retaining all of the security deposit. Accordingly, the Tenant’s application for a return of the security deposit is denied.

14. With respect to the Application for compensation for a bad faith eviction, subsection 65(1) of the Residential Tenancy Act, R.S.P.E.I. cap R-13.11 (the “RTA”) reads:

*Notice given in bad faith*

*65.(1) A former tenant may make an application to the Director under section 75 to determine whether a landlord gave a notice of termination under sections 62, 63 or 64 in bad faith.*

15. Section 62 is for a landlord’s use of the property. Section 63 is for a purchaser’s use of the property. Section 64 is for demolition, conversion, repairs or renovations.

16. The Landlord did not give the Tenant any notice of termination under sections 62, 63 or 64 of the RTA. Indeed, the RTA was not yet law when the eviction occurred.

17. While the Landlord did serve a Form 4 back in October 2022 pursuant to subsection 8.(d)(3) of the *Rental of Residential Property Act* (the “old Act”), section 65 of the RTA does not provide any transitional provisions to permit claims for compensation under the RTA to apply to past evictions under the old Act. Accordingly, the Tenant’s application for compensation for an alleged bad faith eviction is denied.

**5. CONCLUSION**

18. The Tenant’s appeal is dismissed. Order LD23-313, concerning the denial by the Rental Office of the Tenant’s application for a return of a security deposit and an application for compensation for a bad faith eviction, is confirmed.

**IT IS ORDERED THAT**

- 1. **The appeal is dismissed.**
- 2. **Order LD23-313 is confirmed.**

**DATED** at Charlottetown, Prince Edward Island, Thursday, August 31, 2023.

**BY THE COMMISSION:**

(sgd. M. Douglas Clow)

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M. Douglas Clow, Vice-Chair

(sgd. Murray MacPherson)

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Murray MacPherson, Commissioner

**NOTICE**

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

(9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.