



**Date Issued:** October 6, 2023  
**Docket:** LR23061  
**Type:** Rental Appeal

INDEXED AS: 102675 PEI Inc. v. Lisa Hannaford  
Order No: LR23-56

**BETWEEN:**

102675 PEI Inc.

**Appellant**

**AND:**

Lisa Hannaford

**Respondent**

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## ORDER

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Panel Members:

J. Scott MacKenzie, K.C., Chair  
Kerri Carpenter, 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 September 13, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a Landlord must return a Tenant double the security deposit.

## **2. BACKGROUND**

2. On November 1, 2020, 102675 PEI Inc. (the “Landlord”) and Lisa Hannaford (the “Tenant”) entered into a written fixed term tenancy agreement for the premises located at 330 Church Street, Apartment 117, Alberton, PE (the “Premises”). Rent for the Premises was \$750 per month, and the Tenant paid a security deposit of \$750.
3. The Tenant vacated the Premises by February 8, 2023. The Tenant made repeated requests for return of the security deposit and was advised by the Landlord’s representative that he had requested approval from the Landlord. The Landlord did not advise the Tenant that there was any concern with respect to the state of the Premises, failed to respond to the requests for the return of the security deposit, and did not serve a notice of intention to retain all or part of the security deposit within ten days of the date of the end of the tenancy.
4. On April 21, 2023, the Tenant filed an Application with the Rental Office seeking a return of the security deposit.
5. In Order LD23-314 the Rental Office allowed the Application and, in accordance with the provisions of the *Residential Tenancy Act*, ordered the Landlord to pay the Tenant double the security deposit in the amount of \$1500 on or before August 11, 2023.
6. The Landlord filed an appeal with the Commission.
7. The Commission heard the appeal on September 13, 2023, by way of telephone conference call. The Landlord was represented by Pamela Bessette, Jenny Humphrey, and George DesRoches. The Tenant, Lisa Hannaford, also participated and represented herself.
8. Both parties were requested to, and did, provide some additional evidence after the hearing.

## **3. DISPOSITION**

9. The Commission allows the appeal in part and varies the amount the Landlord must pay to the Tenant.

## **4. PRELIMINARY MATTER**

10. As a preliminary matter, the Commission must determine whether the Rental Office was correct in finding that the *Residential Tenancy Act* (“RTA”) applies to the facts of this case.

11. It is clear in this case that the tenancy agreement ended by February 8, 2023. The new RTA did not come into force until April 8, 2023. Therefore, at the time the tenant vacated the Premises and the tenancy agreement ended, the former *Rental of Residential Property Act* (“RRPA”) was in force.
12. However, in Order LD23-314, the Residential Tenancy Officer found that the transitional provision at section 110 of the RTA operated such that the former RRPA no longer applied and the parties were subject to the security deposit provisions in the new RTA.
13. Section 110 of the RTA states:

**110. Transitional - security deposits**

Where a landlord holds a security deposit in accordance with the former Act, the security deposit is deemed to be held in accordance with this Act and the provisions of this Act respecting security deposits apply.

14. Section 112 (2) of the RTA states:

**112(2) Transitional – contravention:**

A contravention of a provision of the former Act that occurred before the coming into force of this Act, but in respect of which no application, hearing or other proceeding was started before the coming into force of this Act, may be dealt with under the former Act as though that Act were still in force.

15. The Commission finds Section 112(2) to be instructive and disagrees with this application of section 110 to the facts of this case where the tenancy agreement between the parties ended at least two months before the new RTA came into force, and the parties’ rights and obligations with respect to the security deposit had already, in effect, “crystallized” while the former RRPA was in force.
16. It is a well-settled presumption that the legislature does not intend that legislation is meant to change the law for the past as well as the future.<sup>1</sup> It is also well-settled that if the law is changed while a matter is pending, the rights of the parties are decided according to the law as it existed when the matter started, unless the new Act clearly shows an intention to vary those rights.<sup>2</sup>
17. In order to determine whether the transitional provision found at section 110 of the new RTA is intended to apply to a matter where the tenancy agreement clearly ended prior to the new RTA coming into force, the Commission must consider how arbitrary or unfair

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<sup>1</sup> Ruth Sullivan, *The Construction of Statutes* (7th edition), at §25.02[7].

<sup>2</sup> See, for example, *Gustavson Drilling (1964) Ltd. v. Minister of National Revenue* (1975), [1977] 1 SCR 271 (SCC).

would it be to apply the new legislation to the facts in question, and the extent to which not applying it would tend to defeat the legislative purpose.<sup>3</sup>

18. The Commission finds that it would be unfair and patently unreasonable in these circumstances to apply the new RTA for at least three reasons.
19. First, according to the former RRPA, if a landlord wanted to retain some or all of the security deposit, they were required to provide notice to the tenant within 10 days or “such longer period as the Director may permit” of the end of the tenancy on February 8, 2023. The tenant could then apply to the Director to dispute this notice.
20. While the former RRPA provided some leniency on the time for providing notice, the new RTA imposes a strict 15-day time limit. A landlord is required to either return the security deposit or make an application to the Director claiming against the security deposit, within 15 days after the tenancy ends (subsection 40(1)). Where a landlord does not comply with subsection 40(1), they are prohibited from claiming against the security deposit and must pay the tenant “double the amount of the security deposit” (subsection 40(4)).
21. In this case, it was already impossible for the Landlord to comply with subsection 40(1) as soon as the new RTA came into force. It would be unfair and patently unreasonable to hold the Landlord to a statutory time limit that had already expired more than six weeks before the new RTA even came into force.
22. Second, and along those same lines, applying the new RTA in these circumstances would result in the Landlord automatically losing all of their rights to claim against the security deposit as soon as the new RTA came into force. This would also be unfair and a patently unreasonable interpretation of the transitional provisions of the RTA.
23. Finally, the new RTA also includes another transitional provision (subsection 112(2)) that clearly states that a contravention of the RRPA that occurred before the coming into force of the RTA, but in respect of which no application was started before the new RTA came into force, may be dealt with under the former RRPA as if it were still in force.
24. As will be further discussed below, the evidence demonstrates that the Landlord neither returned the security deposit within 10 days, nor did they provide notice to the tenant of their intention to retain the security deposit, in accordance with the former RRPA. In these circumstances, the Commission finds it would be a reasonable exercise of discretion, as provided in subsection 112(2) of the RTA, to deal with this contravention under the former RRPA.
25. For these reasons, the Commission finds that section 110 was not intended to apply where a tenancy agreement ended while the former RRPA was still in force and the parties’ rights and obligations respecting security deposits had already “crystalized”. The Commission finds that subsection 110 is intended to bridge the gap for tenants who become entitled to

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<sup>3</sup> Ruth Sullivan, *The Construction of Statutes* (7th edition), at §25.09[3]; see also: *Canada (Attorney General) v. Almalki*, 2016 FCA 195; *Cobb v. Long Estate*, 2017 ONCA 717.

the return of their security deposits after the new RTA came into force, even though they were collected under the former RRPA.

26. Therefore, this appeal will be considered in accordance with the security deposit provisions under the former *Rental of Residential Property Act*.

## 5. ANALYSIS

27. The Rental of Residential Property Act (subsection 10(5)) permits a landlord to retain all or part of a security deposit where they believe the tenant is liable to the landlord for a breach of statutory condition 4, being the tenant's obligation to maintain ordinary cleanliness and repair damage, provided they give notice to the tenant of the intention to retain the security deposit.

28. The onus is on the Landlord, when seeking to retain the security deposit, to establish that the tenant(s) failed to satisfy this obligation.

29. On April 21, 2023, the Tenant filed an application with the Rental Office seeking return of the security deposit. The Application says that the Tenant had been in contact with a representative of the Landlord and had tried to get her security deposit back for almost three months.

30. At the appeal hearing before the Commission, Mr. DesRoches provided evidence that after the Tenant moved out, it was discovered that the Premises were damaged and required repairs. He said that in order to re-rent the apartment, they spent more than the \$750.00 security deposit on repairs. Mr. DesRoches said that the premises required cleaning, painting and replacement of the fridge and mattress. These alleged problems had never been communicated to the Tenant and were only brought up by the Landlord after the Tenant filed the application for return of the security deposit.

31. Mr. DesRoches also testified that it was his understanding that at least half of the security deposit was paid for by Social Services, on behalf of the Tenant.

32. At the hearing, Ms. Bessette accepted that the Landlord did not apply to the Director to retain the security deposit and apologized for not having followed the RRPA requirements. However, she testified that they contacted Social Services and provided them pictures of the damage and that Social Services accepted that they would not receive their half of the damage deposit. Mr. DesRoches' evidence was that a "team member" contacted Social Services to confirm this information.

33. After the hearing, the Landlord submitted five before-and-after pictures of the Premises. However, the pictures are not dated and do not obviously depict damage or uncleanliness over and above normal and expected "wear and tear".

34. The Landlord's representatives testified that the Tenant had been given notice that the Landlord would be retaining the security deposit. However, their testimony was unclear on what date that notice was given. Aside from an email to the Tenant in November, 2022,

advising that the cost to replace a doorknob would be taken from her security deposit, the Record does not contain any evidence, submitted either before or after the hearing, to confirm that the Tenant was notified in writing, by email, text message, or other means, the Landlord would be keeping her entire security deposit after she vacated the premises.

35. The Tenant testified that she never received any notice from the Landlord that they intended to retain her security deposit prior to filing her Application.
36. Evidence submitted by the Landlord after the hearing includes an email thread between the Tenant and Mr. DesRoches. In the emails, the Tenant is clear that she will be moving out January 31, 2023, and raised the issue of the security deposit on January 7 and 12, 2023. Mr. DesRoches replied to this email thread on February 7, 2023, but did not expressly mention the security deposit. On February 8, 2023, the Tenant replied and, among other things, again requested the return of her security deposit.
37. The Tenant testified that that there was no damage to the Premises and it was clean when she left. She alleged that the fridge had to be replaced when she moved in, and that painting would likely be required between tenants in any event. Her testimony was that after she left, she believed everything was fine and there was nothing said to her about damages; and that Mr. DesRoches told her she was getting the security deposit back.
38. With respect to the involvement of Social Services, at the hearing, the Tenant testified that Social Services lends half of the amount for the security deposit and that she was required to pay them back for that. Therefore, she has paid the entire damage deposit. After the hearing, the Tenant provided confirmation via email from her Social Supports Coordinator that the amount loaned to her to assist with the damage deposit was returned in full. The email also says that the Social Supports Coordinator has never been contacted by the Landlord about any damages to the apartment nor did they direct that the Landlord, either by phone, text or email, to keep the security deposit.
39. Based on the evidence submitted, the Commission accepts that the Landlord did not comply with subsection 10(5) of the RRPA when they did not notify the Tenant of the intention to retain the security deposit prior to the Tenant filing her Application with the Rental Office. The email thread referenced above makes it clear that the Tenant raised the issue both before and after she vacated the apartment. However, there is no clear evidence after she left that the Landlord notified her they intended to keep the security deposit. The Landlord's representative, Ms. Bessette, confirmed at the hearing that the Landlord had not made any application to the Director to retain the security deposit.
40. Further, based on a review of the evidence as a whole, the Commission finds that the Landlord has not met their onus to establish that the Tenant failed in her obligation to maintain ordinary cleanliness of the Premises.
41. For these reasons, the Commission orders the Landlord to return to the tenant the entire security deposit in the amount of \$750.00.

## 6. CONCLUSION

42. The Landlord's appeal is allowed, in part. The Commission does not agree with the finding of the Residential Tenancy Office that the Landlord is subject to the security deposit provisions in the new *Residential Tenancy Act*; however, on the facts of this case, the Commission finds that the Landlord is not entitled to retain the security deposit and must repay the Tenant the entire amount of the security deposit, being \$750.00, together with accrued interest for the period of November, 2020, to October, 2023, in the amount of \$17.46, for a total of \$767.46.

### IT IS ORDERED THAT

1. The appeal is allowed, in part.
2. The Landlord must pay the Tenant \$767.46 on or before October 13, 2023, at 4:00 p.m.

**DATED** at Charlottetown, Prince Edward Island, this 6<sup>th</sup> day of October, 2023.

### BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

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J. Scott MacKenzie, K.C., Chair

(sgd. Kerri Carpenter)

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Kerri Carpenter, Commissioner

### NOTICE

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

89. (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.