



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

**Date Issued:** July 11, 2024

**Dockets:** LR24025

**Type:** Rental Appeal

INDEXED AS: Tanmoy Saha v. Fadi Arif

Order No: LR24-40

**BETWEEN:**

Tanmoy Saha (the "Landlord")

**Appellant**

**AND:**

Fadi Arif (the "Tenant")

**Respondent**

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## ORDER

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Panel Members:

M. Douglas Clow, Vice Chair  
Kerri Carpenter, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

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Commission Clerk

Island Regulatory and Appeals Commission

## **A. INTRODUCTION**

1. This appeal was heard by the Commission on May 14, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in its finding with respect to compensation owed to the Landlord for damage to the Rental Unit.

## **B. BACKGROUND**

2. This appeal relates to residential premises located at 16 Hemlock Court, Charlottetown (the “Rental Unit”). On May 1, 2021, the Tenant and the Landlord entered into a written month-to-month tenancy agreement for the Rental Unit. Rent was \$1,975.00, due on the first day of each month. A security deposit of \$1,850.00 was paid.
3. The Tenant vacated the Rental unit on October 28, 2023, after receiving an eviction notice from the Landlord terminating the tenancy agreement because the Landlord wanted possession of the Rental Unit for his son (the “Eviction”).
4. On November 2, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the “Tenant Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed to request compensation from the Landlord and moving expenses as a result of the Eviction.
5. On November 10, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the “Landlord Application”) with Rental Office. The Landlord’s Application was filed to request to retain the security deposit as well as for additional expenses for damages over and above the security deposit.
6. A teleconference hearing was held by the Rental Office on December 5, 2023. The Landlord and Tenant both participated.
7. In Order LD23-587, dated December 13, 2023, the Rental Office awarded the Landlord partial compensation for damages, and the Tenant was awarded the equivalent of one month’s rent plus reasonable moving expenses in accordance with the *Act*. After those amounts were set off against one another, the Landlord was required pay the Tenant \$1,536.56 on or before January 31, 2024.
8. The Landlord filed an appeal with the Commission on April 3, 2024. The Landlord advised that he had not received a copy of Order LD23-587 until March 2024.
9. The Commission heard the appeal on May 14, 2024 by way of telephone conference call. The Landlord and the Tenant both participated. The Landlord’s spouse and co-owner of the property, Sujata Saha, was affirmed and also on the telephone conference line. The Tenant’s son Leith Alaris translated for the Tenant.

## **C. PRELIMINARY MATTER**

10. As a preliminary matter, we note that, in this case, the Rental Office failed to serve the Landlord with a copy of Order LD23-587 until approximately three months after the Order was issued. In those circumstances, based on the language of subsection 89(4) of the

*Act*, the Commission finds that the appeal period commenced when the Rental Office finally served the Landlord and the Commission, therefore, accepted the Notice of Appeal.

## **D. DISPOSITION**

11. The appeal is dismissed. The terms of Order LD23-587 are confirmed, subject to a variation of the accrued interest on the security deposit held by the Landlord.

## **E. Summary of Evidence**

### **Landlord's Evidence**

12. At the hearing, Mr. Saha testified that his only concern on the appeal was compensation for the damage to the trim of the large front window. He submitted that while the Officer in Order LD23-587 rejected a replacement of the window, the Officer did acknowledge that there was some damage done to that window. Mr. Saha testified that he spoke with the contractor who had prepared the original window replacement quote, and testified that the contractor provided him with a verbal quote for repair of the window in the amount of \$800.00 plus tax (for a total of \$920.00). Mr. Saha testified that the window repair work has not been done. He described the damage to the window as "drilled holes and a plastic sheet fastened to the window". He testified that prior to the tenancy with the Tenant, he had lived in the house and he did not notice any problems with that window.

### **Tenant's Evidence**

13. The Tenant submitted text message and email exchanges between himself and the Landlord relating to the Eviction and some requested repairs. At the hearing, the Tenant testified that he had asked the Landlord to fix the window before post-tropical-storm Fiona. The Landlord did not fix the window, so the Tenant fastened the plastic to the window sometime after Fiona.

## **F. ANALYSIS**

14. The sole issue on appeal is the Landlord's claim for damage to the large front window. Importantly, we note that the Landlord has not identified other issues with Order LD23-587. Similarly, the Tenant has not filed a cross-appeal or otherwise challenged Order LD23-587. Accordingly, the Commission's analysis pertains solely to the issue on appeal respecting compensation for damages to the large front window.
15. Where a Landlord makes application to the Director to claim against the security deposit and for compensation for damages, the onus is on the landlord to establish that there was undue damage beyond ordinary wear and tear, caused by the tenant(s) during the tenancy. In those cases, the landlord is required to provide accurate and objective evidence to describe and quantify the damage.
16. In this case, the Landlord testified that the Contractor told him the cost to repair the window damage would be \$800 plus tax. That testimony is hearsay and the Commission, accordingly, gives such relayed information very little evidentiary weight. In order to support his claim, the Landlord should have followed up with filing a written window repair quote prior to the hearing of his appeal. He did not do this. At the hearing he

acknowledged that he did not submit a written quote but stated that he could get it to the Commission. Since the hearing date, the Commission has not received a written quote of the cost to repair the window damage. Without such information, the Commission is unable to consider the amount of any damage award.

17. The Commission therefore denies the Landlord’s claim for damage to the window because he failed to provide persuasive evidence to support his claim. Accordingly, the appeal is dismissed.

**G. CONCLUSION**

18. The appeal is dismissed. The terms of Order LD23-587 are confirmed, subject to a variation of the accrued interest on the security deposit held by the Landlord.

19. Accordingly, the Landlord shall pay to the Tenant the amount of \$1,560.79 calculated as follows:

Landlord Compensation awarded Order in LD23-587	\$2,432.25
Less Security Deposit	(\$1,850.00)
Less Accrued Interest on Security Deposit (calculated from May 1, 2021, to date of this Order)	(\$71.30)
<i>Subtotal</i>	\$510.95
Less Tenant Compensation awarded in Order LD23-587	(\$2,071.74)
<b>Total Owing to the Tenant</b>	<b>\$1,560.79</b>

**IT IS ORDERED THAT**

1. **The appeal is dismissed.**
2. **The terms of Order LD23-587 are confirmed, subject to a in variation of the accrued interest on the security deposit held by the Landlord.**
3. **Accordingly, the Landlord shall pay \$1,560.79 to the Tenant, on or before Friday, July 26, 2024.**

**DATED** at Charlottetown, Prince Edward Island, 11<sup>th</sup> day of July, 2024.

**BY THE COMMISSION:**

(sgd. M. Douglas Clow)

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M. Douglas Clow, Vice 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.