



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

**Date Issued: August 23, 2024**

**Dockets: LR24047**

**Type: Rental Appeal**

INDEXED AS: Fahad Ali Jalal and Yulia Yatsenko v. Steven Hansen

Order No: LR24-51

**BETWEEN:**

Fahad Ali Jalal and Yulia Yatsenko (the "Landlords")

**Appellant**

**AND:**

Steven Hansen (the "Tenant")

**Respondent**

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## ORDER

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Panel Members:

M. Douglas Clow, Acting Chair  
Murray MacPherson, 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 August 13, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlords shall return the security deposit and interest to the Tenant.

## **B. BACKGROUND**

2. The appeal relates to a rental unit located at 13 Reddin Heights, Stratford, PE (the “Rental Unit”). The Rental Unit is a three-bedroom, one-bathroom, single-family dwelling. On March 1, 2023, the parties entered into a written, one-year, fixed-term tenancy. Upon the expiration of the fixed-term, the tenancy continued month-to-month. Rent was \$2,200.00, due on the first day of the month. The Tenant paid a security deposit of \$2,200.00 on March 1, 2023. The Tenant vacated the Rental Unit on April 27, 2024.
3. On May 2, 2024, the Landlords filed a Form 2 (B) Landlord Application to Determine Dispute (the “Application”) with the Rental Office. The Application was filed by the Landlord to make claim against the security deposit. The particulars of the claim included that the Rental Unit suffered water damaged due to a broken pipe in the washroom, a broken window, and garbage left behind.
4. On June 13, 2024, a teleconference hearing was held before the Rental Office. Fahad Ali Jalal appeared, representing the Landlords (the “Landlord”), and the Tenant and his witness participated at the hearing.
5. Order LD24-214 was issued on July 4, 2024, which denied the Landlord’s claim against the security deposit and ordered the Landlords to return the security deposit and interest to the Tenant.
6. The Landlord appealed Order LD24-214 on July 16, 2024.
7. The Commission heard the appeal on August 13, 2024, by way of telephone conference. Fahad Ali Jalal appeared, representing the Landlords (referred to herein as the “Landlord”). The Tenant and a witness for the Tenant, the Landlord’s former property manager (the “Property Manager”), also appeared at the hearing.

## **C. DISPOSITION**

8. The appeal is dismissed.
9. Order LD21-214 is confirmed, subject to a variation in the amount of interest owing on the security deposit held by the Landlord.

## **D. SUMMARY OF EVIDENCE**

### **Landlord’s Evidence**

10. The Landlord’s evidence included documentary evidence as well as his direct testimony. The Landlord submitted a copy of the tenancy agreement, an inspection report prepared by the Property Manager, email correspondence and text message conversations

between himself and the Property Manager, written submissions with photographs, receipts and invoices, and an inspection report with photographs prepared by the Landlord himself.

11. The Landlord's primary reason for seeking to retain the security deposit is because of significant water damage in the bathroom resulting from a broken pipe. The Landlord alleges that the Tenant failed to report the broken pipe in a timely manner, and this caused more damage. The Landlord's evidence was that a large portion of the floor was wet and damaged, there was water damage to the basement ceiling, and mold was present. He submitted that the damage was so significant it must have been leaking for a long time. At the hearing, the Landlord testified that the house had two heat pumps to manage humidity so there were not favourable conditions for the mold to grow after only a few days. The Landlord's position is that the Tenant failed to report the leak on time, allowing the damage to get worse.
12. The Landlord also submitted that the Rental Unit was left unclean and there was garbage left behind in the shed. He also submitted the Tenant undertook electrical work in the Rental Unit without the Landlord's permission, and caused some other minor damages.
13. At the hearing, the Landlord testified with respect to the garbage left behind in the shed, submitting that he believed all of the boxes are the Tenant's, with the exception of a television box.

#### **Tenant's Evidence**

14. The Tenant's evidence included documentary evidence, his direct testimony at the hearing, and testimony from the Property Manager.
15. The Tenant testified that he reported the leak in the bathroom immediately upon noticing it. His written submissions to the Rental Office state that he noticed the leak on January 6, and took steps to contain it and clean it up. He then reported the leak to the Property Manager the next day. The Tenant's written submissions also refer to previous leaks in the Rental Unit that he also reported immediately. The Property Manager testified that he inspected the leak upon the Tenant reporting it, and reported the leak to the Landlord.
16. With respect to the garbage left behind in the shed, the Tenant testified that it was not his. In particular, he testified that the stroller box and barbecue box were not his, because he does not have a barbecue, nor does he have a baby. The Property Manager testified that when he attended the property to do the condition inspection report upon the Tenant moving in, the shed was inaccessible due to ice. Therefore, he did not inspect the shed at that time.
17. With respect to the electrical upgrades, the Tenant's written submissions indicate that he had a plug installed in a bedroom by a licensed electrician after asking the Property Manager for permission.
18. Finally, with respect to the other minor damages and cleaning, the Tenant's written submissions deny the damages were caused by him, if at all, and state that the Rental Unit was cleaner when he moved out than when he moved in. The Tenant also submitted an invoice dated April 28, 2024, for professional cleaning.

## **E. ANALYSIS**

19. This appeal asks the Commission to determine whether the Rental Office erred in finding that the Landlords must return the security deposit and interest to the Tenant.
20. The Residential Tenancy Act provides that a tenant is responsible for “undue damage” to a rental unit that is caused by the actions or neglect of the tenant (s. 28(4)). Tenants are not responsible for reasonable wear and tear (s. 28(5)). Therefore, where a landlord makes application to the Director to claim against the security deposit, 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.
21. In Order LD24-214, the Residential Tenancy Officer found that the Landlords did not establish a valid claim for retaining the security deposit. The Commission agrees.
22. The evidence is clear that there was a broken pipe in the bathroom that resulted in significant water damage to the Rental Unit requiring repair. However, in order for the Tenant to be held responsible for that damage, the Landlord must prove that it was caused by the Tenant’s actions or negligence. On this point, the Landlord’s position is that the damage was so significant because Tenant failed to report the leak in a timely manner.
23. In the Commission’s opinion, the Landlord has not provided sufficient evidence to prove, on a balance of probabilities, that the Tenant failed to report the leak in a timely manner.
24. The Tenant’s direct evidence is that he reported the leak immediately upon noticing it. The Property Manager’s testimony corroborates this. The Landlord’s evidence refuting the Tenant’s version of events is his own personal testimony that mold takes 18-21 days to grow and the damage was very significant, so, therefore, the Tenant must have waited to report the leak. In the circumstances, the Commission does not find the Landlord’s evidence sufficient to make a finding that the Tenant did not report the leak in a timely manner.
25. With respect to the garbage in the shed, the Commission accepts the testimony of the Property Manager that he could not access the shed when he did the condition inspection upon the Tenant moving in. The Commission also accepts the testimony of the Tenant that the particular boxes mentioned by the Landlord were not his, in particular because the Tenant has neither a barbecue, nor a baby.
26. Finally, with respect to the other alleged minor damages and cleanliness of the Rental Unit, the Commission is not satisfied that the Landlord has provided sufficient evidence to support his claim that the Tenant is responsible for “undue damage”. The Tenant submitted an invoice for cleaning services, and the Form 5 Landlord Condition Inspection Report completed by the Property Manager on April 2, 2024, clearly indicates that the “home has been left ready to occupy”.
27. For these reasons, the Commission finds that the Landlords have not established a valid claim against the security deposit.

## **F. CONCLUSION**

28. The appeal is dismissed.

29. Order LD21-214 is confirmed, subject to a variation in the amount of interest owing on the security deposit held by the Landlord.

30. Accordingly, the Landlord shall pay to the Tenant the amount of \$2,278.03.<sup>1</sup>

## **IT IS ORDERED THAT**

1. **The appeal is dismissed.**
2. **Order LD21-214 is confirmed, subject to a variation in the amount of interest owing on the security deposit held by the Landlord.**
3. **The Landlord shall pay to the Tenant the amount of \$2,278.03 on or before September 6, 2024.**
4. **A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Residential Tenancy Act.**

**DATED** at Charlottetown, Prince Edward Island, 23<sup>rd</sup> day of August, 2024.

## **BY THE COMMISSION:**

(sgd. M. Douglas Clow)

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M. Douglas Clow, Acting 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:

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.

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<sup>1</sup> Interest on security deposit calculated from March 1, 2023, to the date of this Order.