



**Date Issued:** October 1, 2024  
**Dockets:** LR24046  
**Type:** Rental Appeal

INDEXED AS: Erin Riley-MacFadyen v. Roger Greaves and Mary Rogerson  
Order No: LR24-59

**BETWEEN:**

Erin Riley-MacFadyen (the "Tenant")

**Appellant**

**AND:**

Roger Greaves and Mary Rogerson (the "Landlord")

**Respondents**

---

## ORDER

---

Panel Members:

Kerri Carpenter, Commissioner  
Cynthia McCardle, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

---

Commission Clerk

Island Regulatory and Appeals Commission

## **A. INTRODUCTION**

1. This appeal was heard by the Commission on August 27, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that The Landlords shall retain the Tenant’s entire security deposit, interest and pro-rated February 2024 rent and that the Tenant shall pay the Landlords \$201.55 by July 11, 2024.

## **B. BACKGROUND**

2. On March 8, 2024 the Landlords filed a *Landlord Application to Determine Dispute (Form 2(B))* (the “Landlord Application”) with the Residential Tenancy Office (the “Rental Office”) seeking to retain the Tenant’s security deposit and additional compensation.
3. On March 11, 2024 the Tenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the “Tenant Application”) with the Rental Office seeking the return of pro-rated rent for February of 2024.
4. The Landlord Application and the Tenant Application are collectively referred to as the “Applications.”
5. On June 4, 2024 at 11:20 a.m. the Landlords and the Tenant participated in a teleconference hearing before the Officer for determination of the Applications. The parties did not raise preliminary matters at the hearing.
6. Order LD24-202 was issued on June 21, 2024, which ordered:
  1. The Landlords shall retain the Tenant’s entire security deposit, interest and pro-rated February 2024 rent.
  2. The Tenant shall pay the Landlords \$201.55 by July 11, 2024.
7. The Tenant appealed Order LD24-202 on July 10, 2024.
8. The Commission heard the appeal on August 27, 2024, by way of telephone conference. The Tenant and both Landlords participated. Kerry Duggan and Craig Jones were present with the Tenant on the telephone conference call.

## **C. DISPOSITION**

9. The appeal is allowed. The Landlords shall retain a portion of the Tenant’s security deposit. The balance of the security deposit, interest and pro-rated rent for the last 6 days of February 2024 shall be returned to the Tenant.

## **D. SUMMARY OF EVIDENCE**

10. At the hearing before the Commission, Ms. Duggan read into the record the Tenant’s written statement (part of Exhibit E-1, page 2 of the file materials). The Tenant also

testified and responded to questions. The Tenant informed the Commission that she was unable to remove her personal property from the rental premises as there were pests in the premises and the pest control company had not sprayed the premises. It was her position that she should not be required to pay for the moving and storage cost for her personal property. It was also her position that, with her possessions in the premises and the Sheriff immediately evicting her, she was unable to clean the premises and therefore should not be required to pay for the cleaning of the premises. She further submitted that the Landlords' video shows the premises to be quite clean. She submitted that the Landlords had failed to follow through with treatment of the premises. She stated that once she gained access to the storage unit she was able to treat her personal property with two fog bombs.

11. The Tenant stated that the pest control company technician did not ask her to remove her personal property and that the pest control company's printed guidelines did not require items to be removed; rather, the items were to be moved two feet back from the baseboards.
12. The Landlords testified that the Tenant informed them in September 2023 that there were pests in the premises and that she wanted the premises to be fumigated and for her to be put up in a hotel during the fumigation. The Landlords contacted Environmental Health and the Environmental Health Officer (EH Officer) issued a letter dated October 13, 2023 (Exhibit E-14, pages 38 and 39 of the file materials). The Landlords stated that the EH Officer referenced that the amount of personal belongings would serve as a barrier to effective treatment. The Landlords testified that the pest control company technician informed them in September 2023 that he could not get in to spray and that 80% to 90% of the belongings would have to be removed to facilitate access. The Landlords stated that the EH Officer verbally informed the Tenant that her belongings would have to be removed in order to spray the premises. The Landlords submitted that their video (Exhibit E-33) reveals that there were too many items in the premises. The Landlords submitted that a moving van had to be used to move the Tenant's belongings and there were still items left that required 2 or 3 half ton truck loads.

## **E. ANALYSIS**

13. In the evidence before the Commission, it is apparent that following the issuance of a February 7, 2024 decision of the Prince Edward Island Court of Appeal (*Riley-MacFadyen v. Greaves, Rogerson and Island Regulatory and Appeals Commission*, 2024 PECA 5), the Tenant was lawfully evicted by the Sheriff at the Landlord's direction on February 23, 2024.
14. Following the eviction, the Tenant's personal belongings remained in the premises. The Landlords then followed the requirements under section 43 of the *Residential Tenancy Act* (the "Act") to deal with these belongings remaining in the premises. The Tenant ultimately obtained her belongings, and pursuant to subsection 43(8) of the *Act*, is required to pay the Landlords "the costs reasonably incurred by the landlord to remove and store the property". The Landlords in the present case did incur costs to pack, transport and store the Tenant's personal belongings that remained. However, these costs must be reasonable and thus the unique circumstances of this appeal must be considered by the Commission.

15. An important added dimension in this appeal relates to *The Public Health Act Rental Accommodation Regulations* (the PHARA Regulations) and the Landlords' obligation to provide necessary pest treatment of the premises under section 9 of the PHARA Regulations and the Tenant's various obligations under section 14 of the PHARA Regulations.
16. With respect to the parties' attempts to fulfill their obligations under the PHARA Regulations, the Commission notes that while testimony was given by the Landlords suggesting the pest control technician and the EH Officer communicated to the Tenant a need for her belongings to be moved, neither individual was called as a witness. There is no clear written communication to the Tenant stating that the belongings must be removed from the rental unit. There is a letter and a text message from the EH Officer. There is also a one-page general handout provided by the pest control company.
17. In her October 13, 2023 letter, the EH Officer stated that she visited the premises on October 4, 2023 and observed the following:
  - *There was significant accumulation of personal belongings present in the home.*
  - *The amount of personal belongings in the rental unit would pose as a barrier to effective treatment ... at the unit.*
  - *There was conflict between the tenant and the landlord which would make communication of what is required in preparation for treatment difficult.*
18. The EH Officer then requested that the Landlords provide the Tenant with a document from the pest control company as to what the Tenant needs to complete prior to treatment and a date of when those items must be completed. The EH Officer stated that the Tenant must be allowed adequate time to complete the pre-treatment work and the Tenant must cooperate with the Landlords and the pest control company to ensure that effective treatment can be completed.
19. The only document in evidence from the pest control company is a one-page handout providing treatment preparation guidelines (part of Exhibit E-1, page 3 of the file materials). This document was provided by the Tenant and has her annotations written on it. This information sheet requires items to be moved, cleaned, covered etc. but makes no mention of a need to remove items from a house or apartment.
20. Exhibit E-21 (page 69 of the file record) is a screenshot of a text message from the EH Officer to the Tenant. No date is visible. The EH Officer states:

*Until you receive direction there is not a whole lot you can do besides work on packing up some items that are going to be removed from the premises. If you have already started this process, that is great! That means it will be less for you to do when you receive instruction. If you do not hear from Roger [one of the Landlords] by the end of the week let me know and I can reach out to him to ask what is going on. My assumption would be he is waiting on pest control to outline what they need from you in order to treat the premises.*

21. From the above message it is apparent to the Commission that at least some items did need to be removed from the premises but direction was required from the pest control company before the Tenant could proceed to ready the premises.
22. The Commission finds that there was poor communication between the parties and between the pest control company and the Tenant. The pest treatment was not completed.
23. The Landlords sought to have the Tenant cover all of the Landlords' packing, moving` and storage costs of \$2,433.36. The Tenant argues that she was unable to remove her belongings without the premises first receiving the required treatment as that might contaminate her future home. The Commission finds that there is some merit in that argument and notes that the Residential Tenancy Officer (RTO), in Order LD24-202, only allowed 50% of the Landlords' costs of packing, moving and storage of the Tenants belongings. In making this determination, the RTO provided detailed reasoning setting out obligations of both Tenant and Landlords and finding that neither party established that they fulfilled their respective obligations. The Commission agrees with this analysis and finds that only 50% of the Landlord's packing, moving and storage costs is reasonable in these unique circumstances. Therefore, the Landlords may recover the sum of \$1,216.68 from the Tenant.
24. The Landlord sought to have its cleaning costs of \$610.00 paid by the Tenant. The Tenant also argues that she was unable to fully clean without treatment being completed. She also notes that the premises were "quite clean" as evidenced by the Landlords' video. The RTO determined that the Landlords' claim for cleaning should be reduced by 40% for a net cleaning award of \$366.00. The Commission disagrees with this finding. Since pest control treatment was not done prior to the Tenant's eviction by the Sheriff, the Tenant was not in a position to fully clean the premises and therefore the Commission finds that the Tenant is not responsible for the cleaning expenses. Accordingly, the Commission denies the Landlords' claim for cleaning.
25. With respect to alleged damage to the premises, the Commission agrees with the RTO that such minor damage would fall under reasonable wear and tear for an over three-year tenancy. Therefore, no award for damage to the premises is made.
26. With respect to the Tenant's claim for return of pro-rated rent, the Commission agrees with the findings of the RTO. The Tenant had paid rent for the month of February 2024. She was lawfully evicted on February 23, 2024. Accordingly, pro-rated rent for six days shall be credited to the Tenant in the amount of \$341.38 (for 6 of 29 days in February).
27. The Commission notes that the Tenant paid a security deposit of \$1000.00 in November 2020. Interest on this deposit shall be credited to the Tenant from November 3, 2020 to the date of the Commission's Order, in the amount of \$46.02.

28. As a result of the above findings, the parties have offsetting awards calculated below:

Credited to Tenant:

Prorated February 2024 Rent	\$ 341.38
Security Deposit	\$1,000.00
Interest on Security Deposit (November 3, 2020 to October 1, 2024)	<u>\$ 46.02</u>
<b>Subtotal</b>	<b><u>\$1,387.40</u></b>

Less amounts credited to Landlord:

Packing, Moving and Storage Compensation	<u>\$1,216.68</u>
Total – payable to Tenant	<u>\$ 170.72</u>

## F. CONCLUSION

29. The appeal is allowed. While the Commission agrees with most of the findings of the Rental Office in Order LD24-202, the Commission denies the Landlords' claim for cleaning expenses and accordingly awards an offset award of \$170.72 to the Tenant.

## IT IS ORDERED THAT

1. The appeal is allowed.
2. The Commission denies the Landlord's claim for cleaning expenses.
3. The Landlord shall pay the Tenant the sum of \$170.72 within 15 days of the date of this Order. The Landlord shall retain the balance of the security deposit.

**DATED** at Charlottetown, Prince Edward Island, 1<sup>st</sup> day of October, 2024.

**BY THE COMMISSION:**

(sgd. Kerri Carpenter)  
\_\_\_\_\_  
Kerri Carpenter, Commissioner

(sgd. Cynthia McCardle)  
\_\_\_\_\_  
Cynthia McCardle, 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.