



Date Issued: October 1, 2024
Dockets: LR24053
Type: Rental Appeal

INDEXED AS: Riley McInnis v. Hailie MacNevin
Order No: LR24-60

BETWEEN:

Riley McInnis (the "Landlord")

Appellant

AND:

Hailie MacNevin (the "Tenant")

Respondent

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 September 4, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord must pay the Tenant double the security deposit plus interest on the original security deposit in the total amount of \$2,037.23.

B. BACKGROUND

2. On June 13, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for double the security deposit.
3. On July 16, 2024 the Tenant, the Tenant’s witness (“TW1”) and the Landlord participated in a teleconference hearing before the Residential Tenancy Officer (the “Officer”) for determination of the Application.
4. Order LD24-230, issued by the Residential Tenancy Office, ordered that the Landlord must pay the Tenant double the security deposit plus interest on the original security deposit in the total amount of \$2,037.23.
5. The Landlord appealed Order LD23-230 on August 2, 2024.
6. The Commission heard the appeal on September 4, 2024, by way of telephone conference. The Landlord and the Tenant participated in the telephone conference hearing. Jordan Anderson also testified on behalf of the Tenant.

C. DISPOSITION

7. The appeal is dismissed. The Notice of Appeal was not served on the Tenant as required by subsection 89(3) and (4) of the Residential Tenancy Act (the “Act”). Order LD24-230 is confirmed, subject to an updating of the interest owed on the security deposit.

D. SUMMARY OF EVIDENCE

8. The Landlord testified that the rental unit was left unclean and that the toilet had to be replaced. He stated that the dryer handle was broken, the floors damaged by dogs and there was dog hair stuck to the outside of the washing machine. He stated he had to pick up after the dogs outside. He acknowledged that the rental unit had been advertised as pet friendly. He testified that, with the exception of the bedroom, the floors were only three years old. He testified that it cost \$9500 for a restoration company to restore the rental unit. He also acknowledged not filing an application to retain the security deposit.
9. The Tenant testified that there was mold as a result of two water leaks which she had promptly reported to the Landlord. One leak was at the water connection to the washing machine. The other leak was from the upstairs shower. She testified that the rental unit

was left better than reasonably clean. The Tenant testified that the house had been purchased by the Landlord in 2016 and the floors were two years old at that time.

10. Mr. Anderson testified that the floors did have some damage but there were quite old. He suggested that they may have been damaged by previous tenants.
11. The Tenant testified that the Landlord had not served her with his Notice of Appeal. The Landlord testified as to the email address he used to serve the Tenant and the Commission notes it is not the same as the email address the Tenant provided on her Form 2(A) Tenant Application to Determine Dispute.

E. ANALYSIS

12. Section 89 of the *Act* sets out the requirements for appealing a decision of the Rental Office to the Commission. Subsections 89(3) and (4) are relevant to this appeal:

Commission to receive notice

(3) An appeal under subsection (1) shall be made by serving a notice of appeal, in the approved form, on the Commission and every party to the Director's order.

Timing of notice

(4) A notice of appeal shall be served on the Commission and other persons referred to in subsection (3) within 20 days after a copy of the Director's order is provided to the person commencing the appeal.

13. From subsection 89(3) and (4), the Landlord was requested to serve the Notice of Appeal on the Tenant as she was a party to Order LD24-230 and such service had to be made within 20 days of the Landlord having received Order LD24-230.
14. According to the Notice of Appeal, the Landlord had received Order LD24-230 on July 17, 2024. He filed it by email with the Commission on August 2, 2024, and this email was copied to an email address which he thought was the Tenant's email address. While a very similar email address to that of the Tenant, it was not the Tenant's email address.
15. The Tenant advised Commission staff on August 8, 2024 that she had not been served with a Notice of Appeal.
16. The Commission finds that August 8, 2024 was the 22nd day following the Landlord's receipt of Order LD24-230 and the Landlord by that day had not served the Tenant with the Notice of Appeal. Indeed, the last day for serving the Tenant with the Notice of Appeal would have been August 6, 2024. Accordingly, the Landlord's appeal was served too late and the *Act* does not give the Commission any statutory power to extend the deadline for seeing the appeal. There is therefore no valid appeal and accordingly for that reason the appeal is dismissed.
17. The Commission notes, (as an aside), that while not necessary to do so, given the failure of the Landlord to serve the Tenant, that the Landlord also failed, within 15 days of the

end of the tenancy, to file a Form 2(B) with the Rental Office. Accordingly, the Commission agrees with the findings in Order LD24-230, that is to say that the Landlord did not comply with section 40 of the *Act* and therefore the Landlord is unable to make a claim against the security deposit and the Landlord must also pay the Tenant double the amount of the security deposit.

F. CONCLUSION

18. Appeal dismissed as the Landlord failed to serve the Notice of Appeal on the Tenant as required under subsections 89(3) and (4) of the *Act*. Order LD24-230 is confirmed, subject to an updating of the interest payable to the Tenant.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD24-230 is confirmed, subject to an updating of the interest payable to the Tenant.
3. The Landlord must pay the Tenant the sum of \$2,041.91, calculated as follows:

Security deposit	\$1,000.00
Interest (October 31, 2022 to date of Commission Order)	\$ 41.91
Security deposit (double award)	\$1,000.00
Total	\$2,041.91

DATED at Charlottetown, Prince Edward Island, 1st 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.