



Date Issued: February 13, 2025
Dockets: LR24088
Type: Rental Appeal

INDEXED AS: Olufemi Adeosun v. Jaspreet Singh and Simranjeet Singh
Order No: LR25-06

BETWEEN:

Olufemi Adeosun (the "Landlord")

Appellant

AND:

Jaspreet Singh and Simranjeet Singh (the "Tenants")

Respondents

ORDER

Panel Members:

M. Douglas Clow, Commissioner
Murray MacPherson, 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 January 8, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord must pay the Tenants \$3,884.27 by December 16, 2024.

B. BACKGROUND

2. This appeal concerns a rental unit located at 54 Melody Lane, Charlottetown, PEI (the “Rental Unit”).
3. The Landlord and the Tenants entered into three fixed-term tenancy agreements from April 1, 2023 to September 30, 2024. A security deposit of \$2,000.00 was paid on March 20, 2023. Rent in the amount of \$2,000.00 was due on the first day of the month.
4. The tenancy agreement ended on September 30, 2024.
5. On October 15, 2024 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the “Tenant Application”) with the Residential Tenancy Office (the “Rental Office”) seeking compensation for double the \$2,000.00 security deposit plus interest.
6. On November 19, 2024 the Landlord emailed a *Form 2(B) Landlord Application to Determine Dispute* (the “Landlord Application”) to the Rental Office claiming compensation for cleaning, waste removal and damage.
7. On November 21, 2024 one of the Tenants, the Tenants’ representative (the “Representative”) and the Landlord participated in a teleconference hearing.
8. The Residential Tenancy Office issued order LD24-398 on November 25, 2024, which ordered that the Landlord must pay the Tenants \$3,884.27 by December 16, 2024.
9. The Landlord appealed Order LD24-398 on December 12, 2024.
10. The Commission heard the appeal on January 8, 2025, by way of telephone conference. The Landlord, Olufemi Adeosun, attended the hearing and the Tenant, Jaspreet Singh, and the Tenant representative, Prabhjit Singh attended the hearing.
11. The applicable legislation is the *Residential Tenancy Act*, cap. R-13.11 (the “Act”).

C. DISPOSITION

12. The appeal is dismissed and Order LD24-398 is confirmed, subject to an updating of the interest calculation.

D. ISSUES

13. Does the evidence support a claim for cleaning and damage?

E. SUMMARY OF EVIDENCE

14. The Landlord stated that the Tenants did not give the 60 days' notice required in the tenancy agreements and submitted that this was a breach of contract. The Landlord stated that there was damage to the walls of the Rental Unit and damage, such as dents and scratches, to the appliances. The Landlord denies that the dishwasher was dented at the start of the tenancy. The Landlord submitted that he had provided the Tenants with "a brand new apartment". The Landlord stated that he was not pleased with Order LD24-398.
15. Under questioning, the Landlord admitted that no inspection report was done or pictures taken at the time the Tenants moved into the Rental Unit. He also acknowledged no walk through inspection was done. He is claiming replacement cost for the appliances but acknowledged that he has not yet replaced the appliances. The Landlord stated that he was previously unaware of the provisions of section 40 of the *Act*.
16. The Tenant Jaspreet Singh stated that the Tenants had given the Landlord notice in July 2024 and thus the 60-day notice requirement was met when they moved out on September 30, 2024. He submitted everything was clean when they moved out, referencing pictures taken at 9:00 p.m. after finishing the cleaning. He submitted that the Landlord's pictures were taken at approximately 6:00 p.m. before the Tenants had finished cleaning. He submitted that the dents in the dishwasher were there when the Tenants moved in. He also submitted that there was another tenant in the Rental Unit for three or four months before the Tenants moved in.

F. ANALYSIS

17. In making a claim for damages and cleaning, a landlord bears the onus of establishing that the claim of damage or lack of cleanliness to a rental unit, or its included appliances, were actually caused by the specific tenants the landlord is claiming against. In the present appeal, the Landlord has failed to provide sufficient objective evidence to meet this onus. This appeal is therefore dismissed and Order LD24-398 is confirmed. The Commission's analysis follows.
18. In Order LD24-398, the Rental Office, while rejecting the Landlord's claim for damage and lack of cleanliness, allowed the Landlord's claim of \$195.62 offsetting it against the double return of security deposit claim, with interest. The Commission takes notice that the Tenant did not file a cross appeal and thus has not challenged this allowed claim. There is objective evidence to support the waste removal claim and the Commission confirms Order LD24-398 in allowing such claim.
19. The Commission notes that Order LD24-398 awarded a double return of security deposit, together with interest on the original security deposit. As explained in recent Commission Orders relating to appeals under the *Act*, a failure to comply with section 40 of the *Act* triggers a required double return of the security deposit. The operation of section 40 is explained in detail in Order LD24-398. An unawareness of the law is not a mitigating factor and neither the Rental Office nor the Commission has any discretion or authority to waive the application of section 40 of the *Act*.

20. While the pictures taken by the Landlord do, at first blush, suggest that cleaning was incomplete, and included close up pictures showing damage to appliances (particularly the dishwasher), the Commission accepts the evidence of the Tenant that the Landlord's pictures were taken at 6:00 p.m. on September 30, 2024 approximately three hours before the Tenants had finished cleaning and taken their own pictures.

21. Clause 39(2)(a) of the *Act* sets the standard for reasonable cleanliness and condition:

When a tenant vacates a rental unit, the tenant shall

(a) leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear ...

22. The *Act* does not demand that a rental unit be spotless, nor does it demand that it be in move in condition. The *Act* does not insist on the rental unit being in perfect condition as it accounts for reasonable wear and tear. What is reasonable depends on many factors. Relevant factors here are the length of the tenancy and the condition of the Rental Unit at the start of the tenancy. The length of the tenancy is known, starting April 1, 2023 and ending September 30, 2024. The condition of the Rental Unit at the start of the tenancy was not objectively established by the Landlord. The Landlord, as the party making the claim for damages and lack of cleanliness, bears the onus of providing objective evidence. The Tenants' pictures, taken after they completed cleaning, persuade the Commission that the Rental Unit was left reasonably clean. Accordingly, the Commission rejects the Landlord's claim as it relates to an alleged lack of cleanliness.

23. Much comment was made by the Landlord about scratches and dents on the appliances and in particular the dishwasher. The Landlord claims the appliances were new when the Tenants moved in and offers two undated pictures (Exhibit E-7) in an effort to prove this. Both these pictures show the appliances at some distance. The Tenants say there was another tenant there for three or four months before they moved in. The Landlord has not provided documentation, other than Exhibit E-7, to prove the appliances were new at the start of the tenancy. The photos in Exhibit E-7 could have been taken at the start of the Tenants' tenancy or at the start of an earlier tenancy. The Landlord has failed to objectively establish that the appliances were scratch and dent free at the start of this tenancy. Accordingly, the Commission rejects the Landlord's claim relating to damage to the appliances.

24. The Landlord also has made a claim for damage to interior walls of the Rental Unit. The Landlord claims the Rental Unit was "brand new" yet offers no evidence to prove this, such as documentation to establish when construction was complete or pictures, inspection report etc. to establish that it was either "brand new" or in brand new like condition. The Tenant testified that there was a previous tenant there for three or four months. Without objective evidence, the Commission is left with only the oral testimony of the two opposing parties. Once again, the Landlord has not met his onus, he has not provided objective evidence to support his claim. Accordingly, the Commission rejects the Landlord's claim relating to damage to the Rental Unit.

25. In the present appeal, the Landlord has provided evidence in the form of pictures taken at the end of the tenancy. There was no inspection report in evidence. There was no indication that a formal walk-through inspection was done. There were no photographs of

the Rental Unit and its appliances at the beginning of the tenancy, with the exception of the more distant undated pictures in Exhibit E-7. There were no receipts or invoices for the damaged appliances to prove that they were new and when they had been purchased. In short, there was little objective evidence to establish the condition of the Rental Unit and its appliances at the commencement of the tenancy and thus no reference point to persuade the Commission that the damage or lack of cleanliness was caused by the Tenants. The onus rests with the Landlord to prove his claims and he has failed to do so.

26. The Commission dismisses this appeal and confirms Order LD24-398, subject to an updating of interest payable on the original \$2,000.00 security deposit. Accordingly, interest on the security deposit, from the period of November 26, 2024 to the date of this Commission Order, in the amount of \$10.45, will be added.

G. CONCLUSION

27. The appeal is dismissed. Order LD24-398 is confirmed, subject to the updating of the interest calculation.

IT IS ORDERED THAT

- 1. The appeal is dismissed.**
- 2. Order LD24-398 is confirmed, subject to an updating of the calculation of interest.**
- 3. Additional interest on the \$2,000.00 security deposit, covering the period of November 26, 2024 to February 13, 2025, in the amount of \$10.45, will be added to the total payable by the Landlord to the Tenants.**
- 4. The Landlord must pay the Tenants \$3,894.72 (representing \$3,884.27 plus \$10.45) by February 28, 2025.**

DATED at Charlottetown, Prince Edward Island, 13th day of February, 2025.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow

(sgd. Murray MacPherson)

Murray MacPherson

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.