



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

**Date Issued: February 13, 2025**

**Dockets: LR24074**

**Type: Rental Appeal**

INDEXED AS: Margaret Frizzell Younker v. Ericka Wilson-MacDonald

Order No: LR25-07

**BETWEEN:**

Margaret Frizzell -Younker (the "Landlord")

**Appellant**

**AND:**

Ericka Wilson-MacDonald (the "Tenant")

**Respondent**

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## ORDER

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Panel Members:

Kerri Carpenter, Commissioner  
M. Douglas Clow, 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 November 20, 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 \$326.50 by October 27, 2024.

## **B. BACKGROUND**

2. On September 27, 2014 the parties entered into a written fixed-term tenancy agreement which continued as a month-to-month agreement. Rent in the amount of \$843.48 is due on the first day of the month. A \$400.00 security deposit was paid in September of 2014.
3. On August 20, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application sought a return of electricity costs incurred by the Tenant. The Tenant emailed the Application to the Landlord.
4. On September 19, 2024 the Tenant amended the Application to include a return of rent claim. The amended copy of the Application was emailed to the Landlord.
5. On September 26, 2024 the Tenant and the Landlord participated in the teleconference hearing for determination of the Application. The parties confirmed receipt of the Evidence Package. The parties provided additional evidence and submissions after the hearing.
6. On October 7, 2024, the Residential Tenancy Office issued Order LD24-332, which ordered that the Landlord must pay the Tenant \$326.50 by October 27, 2024.
7. The Landlord appealed Order LD24-332 on October 23, 2024.
8. The Commission heard the appeal on November 20, 2024, by way of telephone conference. The Landlord, Margaret Frizzell-Younker, and Tenant, Ericka Wilson-MacDonald attended the hearing.

## **C. DISPOSITION**

9. The appeal is dismissed. Order LD24-332 is confirmed, subject to a variation to correct an error in the amount awarded to the Tenant. The correct return of rent to be paid by the Landlord to the Tenant is \$317.00.

## **D. SUMMARY OF EVIDENCE**

10. The Landlord testified that the tenancy commenced in 2014. She provided background history of the landlord-tenant relationship, including various frustrations she had with the Tenant and various matters which were not relevant to the appeal before the Commission. She described the damage to the Rental Unit as a result of Hurricane Fiona on September 24, 2022. She noted that the Tenant was unable to live in the Rental Unit as a result of that damage until repairs were completed. The outside repairs to the roof were completed in October 2022 and the inside repairs were completed by December 11, 2022. The

Tenant moved out during this time period but left many of her items in the Rental Unit. The Landlord did not charge a fee for storage of these items. The Tenants also left her three cats at the Rental Unit.

11. The Landlord testified that she expected rent to be paid on December 1, 2022 and the Tenant did not pay December 2022 rent until December 12, 2022. When questioned by the panel as to why she would expect to be paid rent for the first 12 days of December 2022 when construction was ongoing and the Tenant was unable to move back in, the Landlord replied that the rent was always paid on the first day of the month and it was “imminent” that renovations would be done and the Landlord had bills to pay.
12. The Landlord testified that the monthly rent in December 2022 was \$818.91 and Order LD24-332 erroneously used the monthly rent in 2024, \$843.48, in making calculations of the award to the Tenant.
13. The Tenant testified as to the history she had with the Landlord. She described the damage to the Rental Unit caused by Hurricane Fiona, noting that the front part of the roof was peeled off. She stated that the Landlord had told her she could store items in the back room. She testified that the Landlord had asked that she keep a watch over the Rental Unit. The Tenant stated that her three cats, which remained at the Rental Unit, spending much of their time outside, were “indoor-outdoor cats” and she checked on the rental Unit every second day or so. She stated that she cleaned up some of the debris from the damage, such as fibreglass insulation from the roof. She testified that the Landlord had demanded December 2022 rent before the Tenant was permitted to return to the Rental Unit. The Tenant explained that she did not want to pay the December 2022 rent until she had moved back in.
14. The Tenant also spoke of her claim before the Rental Office for reimbursement of increased electricity costs, noting that under the lease she was responsible for the cost of electricity and the Landlord was responsible for heating the Rental Unit, and the Landlord, by installing a heat pump and restricting use of the oil furnace, effectively transferred much of the heating cost to the Tenant. The Tenant did acknowledge, however, that she did not appeal Order LD24-332 to the Commission.

## **E. ANALYSIS**

15. At the hearing before the Commission the Tenant offered testimony which appeared to imply a challenge to Order LD24-332 with respect to the denial of her electricity cost claim. The Commission finds that the Tenant had the right to appeal Order LD24-332 regardless of whether or not the Landlord appealed. The Tenant, by not exercising her right of appeal is considered to have accepted the findings of Order LD24-332 on both the return of rent issue and the reimbursement for electricity cost issue. Accordingly, there is no appeal before the Commission pertaining to the electricity cost claim ruled on in Order LD24-322.
16. With respect to return of rent, the issue focuses on the 12 days during the month of December 2022 during which the Tenant did not have possession of the Rental Unit and yet had paid rent at the insistence of the Landlord. On September 28, 2022 (see Exhibit E-13, page 24 of the Commission file record) the Landlord had sent the Tenant the following text message:

*Good Wednesday morning Ericka. No word from the adjuster as yet. Have you been to house today? How did the tarp work? I will not be collecting rent for however long it takes to fix the damage but I hope you could pop over to check the place when you can. Will keep you posted as I know more.*

17. The September 28, 2022 text message from the Landlord made it quite clear that no rent would be charged until the damage was fixed and that the Landlord requested that the Tenant check on the Rental Unit. The Commission finds that not charging rent for the Rental Unit while it could not be occupied is both reasonable and to be expected in the circumstances.

18. However, by December 2022 the Landlord had changed her position as revealed by various text messages also contained in Exhibit E-13 (see pages 25 to 28). On December 9, 2022 the Landlord advised that the Rental Unit was not yet finished yet was asking for rent. The Tenant replied that she had not sent the rent yet because she was not able to move in yet. The Landlord then demanded the rent. The Tenant then replied and an exchange resulted:

*[Tenant] There is no need to be rude. You told me that you weren't going to charge me rent until I was back in the home. I had access to the place to feed the cats and to do the errands that you asked of me but I have not been able to live in the space yet. I can't pay rent for a space that I can't eat or sleep in. If its done today I can send along the rent.*

...

*[Tenant] [redacted for privacy] just stopped to check on the place and they are doing the trim now! So it should be done by today. Do you think we can move in?*

*[Landlord] No*

*[Tenant] Ok, if the flooring and trim is done what else would need to be done before we move in I will pay the full month's rent when the place is done*

19. On Monday December 12, 2022 the following text exchange occurred:

*[Tenant] Hi Marg just wondering if the place will be done today? I was just wondering about moving in before it storms tomorrow*

*[Landlord] When your full months rent for December is in my bank I will let you know.*

*[Tenant] Sent*

20. While the Commission finds that the Tenant paid the full amount of rent for all of December 2022, she did so at the insistence of the Landlord who denied her right to re-occupy the Rental Unit until all of December 2022 rent was paid. As the Tenant was denied possession of the Rental Unit until December 12, 2022, no rent should have been charged by the Landlord for the first 12 days of December 2022. Accordingly, the Commission agrees with the Director that a return of rent for the first 12 days of December 2022 should be given to the Tenant.

21. The Landlord correctly pointed out that Order LD23-332 calculated the return of rent based on the monthly rent in 2024. The actual rent paid in December 2022 by the Tenant is verified by a December 12, 2022 e-transfer in the amount of \$818.91 (Exhibit A-6, page 166). Accordingly, the Commission calculates the return of rent as follows:

$$\$818.91 \times 12/31 = \$317.00$$

22. The Commission agrees with the findings contained in Order LD24-322 other than the calculation of the return of rent. The Commission accordingly varies the return of rent calculated by the Rental Office of \$326.50 to \$317.00. The Landlord shall pay the sum of \$317.00 to the Tenant by February 28, 2025.

## **F. CONCLUSION**

23. The appeal is dismissed and Order LD24-322 is confirmed, subject to correcting the return of rent to \$317.00.

## **IT IS ORDERED THAT**

- 1. The appeal is dismissed.**
- 2. Order LD24-322 is confirmed subject to the following correction.**
- 3. The Landlord must pay the Tenant \$317.00 by February 28, 2025.**

**DATED** at Charlottetown, Prince Edward Island, 13<sup>th</sup> day of February, 2025.

## **BY THE COMMISSION:**

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Kerri Carpenter, Panel Chair

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M. Douglas Clow

## **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.