



Date Issued: March 4, 2025
Dockets: LR24089 and
LR25003
Type: Rental Appeal

INDEXED AS: Lude Meng v 11907573 Canada Ltd.
Order No: LR25-12

BETWEEN:

Lude Meng (the "Tenant")

Appellant /Respondent by Cross Appeal

AND:

11907573 Canada Ltd. (the "Landlord")

Respondent/Appellant by Cross Appeal

ORDER

Panel Members:

Kerri Carpenter, Acting Chair
M. Douglas Clow, Acting Vice Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

A. INTRODUCTION

1. These appeals were heard by the Commission on January 28, 2025, and ask the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in its finding in Order LD24-435.
2. As will be discussed further below, both the Tenant and the Landlord appealed Order LD24-435. The Commission consolidated the two appeals, and this Order disposes of both matters.

B. BACKGROUND

3. These appeals concern a rental unit located at Unit 202, 16 Lupine Street, Montague, PEI (the “Rental Unit”). On August 29, 2022 the parties entered into a written, fixed-term tenancy agreement for the period of September 15, 2022 to September 30, 2023. Upon expiry of the fixed-term, the tenancy continued on a month-to-month basis. On September 15, 2022 the Tenant paid a \$1,350.00 security deposit. Rent was \$1,350.00 due on the first day of the month.
4. On May 10, 2024 the Landlord’s representatives (the “Representatives”) served the Tenant a *Form 4 (A) Eviction Notice* (the “First Notice”) effective June 10, 2024 for non-payment of rent, repeatedly late payment of rent and damage.
5. On June 2, 2024 the Representatives served the Tenant another *Form 4 (A) Eviction Notice* (the “Second Notice”) effective June 21, 2024 for non-payment of rent. The Tenant paid 14-days’ of rent for June of 2024.
6. On June 14, 2024 the Tenant vacated the Unit and the tenancy agreement ended by mutual agreement.
7. On July 17, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Tenant’s Application”) with the Residential Tenancy Office (the “Rental Office”) seeking compensation for double the \$1,350.00 security deposit, plus interest and compensation for personal property disposed of by the Landlord in the amount of \$200.00.
8. On November 13, 2024 the Representatives filed a *Form 2 (B) Landlord Application to Determine Dispute* (the “Landlord’s Application”) with the Rental Office claiming compensation for damage and cleaning in the amount of \$5,462.50.
9. On November 26, 2024 the Tenant, a representative for the Tenant, a witness for the Tenant and the Representatives participated in a teleconference hearing before the Residential Tenancy Office. The parties confirmed receipt of the Evidence Package and the Landlord’s additional evidence. The parties also confirmed that all documents submitted to the Rental Office were included in the Evidence Package.
10. On November 27, 2024 the Tenant submitted 35-pages of additional evidence. The Representatives provided a response to the Tenant’s additional evidence. Both the additional evidence and the response were included as evidence.

11. On December 23, 2024, the Residential Tenancy Office issued Order LD24-435, which ordered the Landlord to pay to the Tenant \$26.21 by January 14, 2025.
12. The Tenant appealed Order LD24-435 on December 31, 2024. This appeal was opened as Docket LR24089. The Landlord appealed order LD24-435 on January 9, 2025, which was opened as Docket LR25003. As a matter of efficiency, the Commission exercised its discretion to consolidate these two appeal dockets.
13. The Commission heard the appeals on January 28, 2025, by way of telephone conference. The Tenant, Lude Meng, attended the hearing and the Landlord representative, Yue Liu attended the hearing (“Ms. Liu”).

C. DISPOSITION

14. The Tenant’s appeal is allowed in part, reducing the claim for the damaged countertop from \$2,777.25 to \$500.00.
15. The Landlord’s appeal is dismissed.
16. The remainder of Order LD24-435 is confirmed, subject to an updating of the interest calculation.

D. ISSUES

17. The Tenant appealed Order LD24-435 on the grounds that they do not believe they should be responsible for paying for damages to the kitchen countertop in the amount of \$2,777.25.
18. The Landlord cross-appealed Order LD24-435, seeking to overturn the Order and requesting that their claim of compensation for \$5,462.50, be allowed.
19. The ultimate issue for the Commission to consider in these appeals is whether Order LD24-435 was correctly decided.

E. SUMMARY OF EVIDENCE

20. The Tenant testified that she moved out of the Rental Unit on June 14, 2024. She testified that she was only contacted by the Landlord about the condition of the countertop on June 22, 2024. The Tenant stated that there was a period of eight days during which the countertop could have been damaged by another person. The Tenant denied damaging the countertop.
21. The Tenant denied touching the water heater and she denied damaging the bathroom heater. The Tenant stated that there were some water leaks near the bathroom vanity which she asked to be repaired but were never repaired during the tenancy. The Tenant testified that although the Rental Unit was new when she moved in there were things which were broken. She claimed that some of the plumbing fittings were of poor quality.

22. The Tenant stated that there was no inspection of the Rental Unit before moving in and no offer to do a final inspection with the Landlord upon moving out.
23. The Tenant also claimed that she accidentally left behind a box with contents worth about \$2,000 which the Landlord disposed of.
24. Ms. Liu testified that the parties had an oral agreement to keep the security deposit. However, Ms. Liu stated that the Landlord respects the ruling on the double security deposit and treats it as a lesson learned and thus the Landlord did not raise the matter of the double security deposit in the Landlord's appeal.
25. Ms. Liu submitted that she believed the valuation of the countertop should be based on 90% of its replacement value, rather than at 70% as calculated on Order LD24-435. Ms. Liu also submitted that the valuation of the replacement cost of the countertop should be \$3,570.75 rather than \$2,777.25.
26. Ms. Liu reviewed the Landlord's appeal claims (see Exhibit C-2, page 194) submitting that the Tenant should pay \$300 for replacement of the bathroom heater, \$450 for repair of the bathroom vanity, \$120 for the sink and bathtub drain repairs, \$200 for wall damage and painting, \$80 for additional cleaning, \$350 for damage to the water heater. Ms. Liu explained that the damage to the bathroom heater was caused by water getting into the unit with the result that segments of the display panel are no longer visible.
27. Ms. Liu also noted that a Form 5 Landlord Condition Inspection Report was completed on June 14, 2024, see Exhibit E-12, page 56. Exhibit E-13 contains photographs associated with the Form 5 report.
28. With respect to the Tenant's claim for \$2,000 for the missing contents of the large box, Ms. Liu submitted that the Tenant had not raised that matter in her hearing before the Rental Office.
29. Upon questioning from the Commission panel, Ms. Liu acknowledged that the kitchen countertop has not yet been replaced because the Landlord does not have the money to do so. She also acknowledged that the countertop for the kitchen island was not damaged but stated it would need to be replaced to match the colour of the rest of the countertop. Ms. Liu that the Landlord's staff had attempted to use a special polish recommended by the countertop installer but this did not fix the damage.

F. ANALYSIS

30. Section 18 of the *Residential Tenancy Act* (the "Act") requires a landlord and a tenant to inspect the condition of a rental unit in each other's presence on the day the tenant is entitled to possession of the rental unit or on another day agreed on by them. The landlord is required to complete an inspection report, sign it and give it to the tenant. A landlord may only make the inspection without the tenant if the landlord has provided at least two reasonable opportunities for inspection and the tenant does not participate. In such circumstances, the landlord must still provide the tenant with a signed inspection report.

31. In the present matter, there is no evidence of any section 18 pre-tenancy inspection report. There is no evidence that there was a section 18 inspection and there is no evidence that the landlord offered the tenant at least two reasonable opportunities for inspection.
32. Section 38 of the *Act* requires an inspection at the end of the tenancy. This is to be an inspection of the condition of the rental unit by landlord and tenant in each other's presence before a new tenant moves in. The inspection is to take place on or after the tenant ceases to occupy the rental unit or on another day agreed upon by them. The landlord must offer the tenant at least two reasonable opportunities for the inspection. The landlord must complete a condition inspection report and the landlord and tenant must sign it. The landlord must give the tenant a copy. A landlord may only make inspection and complete the report without the tenant if the landlord has provided the tenant with at least two reasonable opportunities for the inspection and the tenant does not participate on either occasion.
33. In the present matter, there is an unsigned Form 5 Landlord Condition Inspection Report, see Exhibit E-12 page 56 and the photographs which follow in Exhibit E-13 on pages 57 to 94. There is no evidence that the Landlord offered the Tenant at least two reasonable opportunities for the inspection. This report notes various damage listed in the Landlord's claim. It states the following with respect to the kitchen countertop:
- 8. Quartz countertop damage, charged \$500 because unremovable damage was done, total piece price should be \$2000.*
34. The Commission finds that the Landlord failed to comply with the section 18 and section 38 statutory requirement for pre-tenancy and post-tenancy inspections. These requirements are in place to protect both landlords and tenants and to provide the Rental Office and the Commission with the best possible evidence of the condition of a rental unit at the start and at the end of the tenancy. A deterioration in the condition of the unit during the tenancy will then be more clearly apparent.
35. Where a landlord has failed to comply with both sections 18 and 38, the Commission can only award a damage claim to a landlord if that claim is supported by objective and compelling evidence with respect to who caused the damage and how much it costs to repair. The onus to establish such damage and who caused it rests on the party seeking the damage claim and a failure to comply with sections 18 and 38 "raises the bar" thus making it more difficult, but not impossible, to support the claim. Accordingly, the Commission will review the Landlord's evidence to determine whether the evidence is sufficiently compelling to support the Landlord's claim in the absence of section 18 and 38 inspections.
36. The Landlord claims the entire kitchen countertop needs to be replaced. The Landlord offers Exhibit E-18 on page 100. This is a quote for \$3,450 plus HST. The quote is undated. It references "countertops drawings". There are two pages of countertop drawings in evidence in Exhibit E-17 on pages 98 and 99. Both sets of drawing give a date of "2021.12.06" which predated the commencement of the tenancy. As the quote itself is undated, the Commission finds that there is the very real possibility that the quote was not for replacement due to damage but the original installation which pre-dated the tenancy. Further, there is no letter, report or note from the countertop supplier/installer

stating that the countertop had to be replaced due to damage. In addition, the Commission is aware, from the Form 5 filed by the Landlord, that the Landlord originally sought a claim for \$500 and the total price should have been \$2,000. The Landlord testified that a polishing product was tried on the countertop. There were no pictures before and after this polishing process. The Landlord testified that the countertop has not been replaced. The pictures suggest the countertop received some cosmetic damage but was not destroyed. The Commission finds that there is evidence of some damage to the countertop and finds that it is more probable than not that the damage occurred during the tenancy. However, the Commission finds that the evidence does not support an award other than what the Landlord had initially sought. Accordingly, the Commission reduces the Landlord's countertop claim to \$500.00.

37. The Landlord seeks to challenge various claims for alleged damage not allowed by the Rental Office in Order LD24-435: bathroom heater, bathroom vanity, sink and bathtub drain, wall damage and painting, cleaning of unit, and water heater.
38. With respect to the bathroom heater, the damage complained of is that segments of the panel display are no longer visible and were caused by water getting in to the unit. There is no evidence from a professional installer or electrician on this point. There is the very real possibility, in the absence of section 18 and section 38 compliance, that the bathroom heater was defective when installed or had a defects that later occurred. The Commission finds that the Landlord's claim of \$300 is not supported.
39. Concerning the bathroom vanity, there is no evidence from a repair professional that this was damaged by anyone. In the absence of section 18 and section 38 compliance, this issue could have been due to poor workmanship with the original installation. The Commission finds that the Landlord's claim for \$450 is not supported.
40. Concerning the sink drain, bathtub drain, and the water heater; the Commission notes that the Rental Office did allow a \$60 claim for the bathtub drain but denied the other two plumbing claims. The Commission agrees with this approach and points out that Exhibit E-14, the plumber's invoice on page 95, describes the service as "fix 3 plumbing issues 102 Lupine & 202 Lupine". The Commission notes that unit 102 is not the Rental Unit and therefore the Commission cannot determine whether there was one issue or two issues out of the three issues which applied to unit 202 as the Rental Unit. Nor can the Commission determine what the issue was from the invoice. While the photograph of the bathtub drain does appear to show an obvious break, the other concerns could potentially be attributable to poor product quality or poor workmanship. The Commission will continue to allow the \$60 claim for the bathtub drain but deny the other plumbing claims.
41. With respect to the wall damage and painting claim, the Commission notes there is no invoice for this. From the photographs the damage appears fairly minor and consistent with reasonable wear and tear. The Commission agrees with the Rental Office that no claim is warranted.
42. With respect to a claim for \$80 for additional cleaning, the Commission agrees with the Rental Office that the Landlord has failed to establish that the Rental Unit fell below the standard of "reasonably clean" and therefore the claim is denied.
43. Accordingly, the Commission dismisses the Landlord's appeal in its entirety.

44. The Tenant has attempted to claim the sum of \$2,000 from the Landlord for a box containing items that the tenant had mistakenly left behind. The Commission notes that this claim has not been made before the Rental Office and accordingly cannot be addressed by the Commission on appeal.
45. The Commission takes notice that the Landlord has not appealed the double security deposit award mandated under section 40 of the *Act*. The Commission notes that there is no evidence before the Commission to suggest that the double security deposit provisions would not apply and the Commission agrees with and adopts the determination of this matter set out in Order LD24-435.
46. The security deposit was \$1,350.00. Interest on that security deposit from September 15, 2022 to December 23, 2024 is \$63.46. Interest from December 24, 2024 to the date of the Commission's Order is \$6.49. Added to this is the double security deposit award of an additional \$1,350.00. Added to this amount is \$100.00 representing compensation to the Tenant for kitchen items disposed of by the Landlord. This totals \$2,869.95 [\$2,863.46 + \$6.49]. Subtracted from this amount is a valid claim of \$500.00 for kitchen countertop damage and \$60.00 for damage to the bathtub drain. The net total payable to the Tenant is \$2,309.95 [\$2,303.46 + \$6.49].

G. CONCLUSION

47. The Tenant's appeal is allowed in part, with a significant reduction in the kitchen countertop damage award due to evidentiary concerns.
48. The Landlord's cross-appeal is dismissed as the evidence is insufficient to establish the Landlord's claims which were previously rejected by the Rental Office.

IT IS ORDERED THAT

1. **The Tenant's appeal (Docket LR24089) is allowed in part.**
2. **The Landlord's cross-appeal (Docket LR25003) is dismissed.**
3. **The Landlord must pay the Tenant the sum of \$2309.95 [\$2,303.46 + \$6.49] by March 31, 2025.**

DATED at Charlottetown, Prince Edward Island, 4th day of March, 2025.

BY THE COMMISSION:

(sgd. Kerri Carpenter)
Kerri Carpenter, Acting Chair

(sgd. M. Douglas Clow)
M. Douglas Clow, Acting Vice Chair

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.