



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

**Date Issued:** April 11, 2025  
**Dockets:** LR24081 + LR25010  
**Type:** Rental Appeal

INDEXED AS: Shixia Xing v. Adaeze Ogbonnaya  
2025 PEIRAC 17 (CanLII)  
Order No: LR25-15

**BETWEEN:**

Shixia Xing

**Landlord**

**AND:**

Adaeze Ogbonnaya

**Tenant**

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**ORDER**

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Panel Members:

Kerri Carpenter, Vice Chair  
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

## **A. INTRODUCTION**

1. This Order disposes of two dockets that involve the same parties and some overlapping facts and evidence. These dockets were not consolidated or heard together by the Commission, but because the appeals involve the same parties and seek monetary awards in favour of both parties, we have nevertheless determined to dispose of both appeals in one order as a matter of both efficiency and convenience to the parties to allow us to set-off the amounts owing in each matter.
2. The appeal in Docket LR24081 was heard by the Commission on January 7, 2025, 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.
3. The appeal that is the subject of Docket LR25001 was heard by the Commission on March 25, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Tenant must pay the Landlord an amount for rent (for September 2024) and travel expenses.

## **B. BACKGROUND**

4. Both appeals concern a rental unit located at Room D - 15A MacKinnon Road, Charlottetown, PEI (the “Rental Unit”). On August 8, 2024, the parties entered into a written, fixed-term tenancy agreement for the period of September 1, 2024, to August 31, 2025. Rent was set at \$750.00 and was due on the first day of the month. On August 8, 2024, the Tenant paid a \$750.00 security deposit to the Landlord.
5. On August 31, 2024, the Tenant advised the Landlord that due to personal circumstances, she was unable to move into the Rental Unit.

### **Landlord’s Appeal – Docket LR24081**

6. On September 26, 2024, the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* with the Rental Office. The Tenant’s application sought a return of the \$750.00 security deposit.
7. On October 24, 2024, the Tenant and the Landlord participated in a teleconference hearing for determination of the Tenant’s application before the Rental Office. On October 30, 2024, the Rental Office issued Order LD24-362, which ordered that the Tenant was entitled to a return of the \$750.00 security deposit, interest of \$3.82 on the security deposit, and an additional \$750.00 payable by the Landlord pursuant to subsection 40(4) of the *Residential Tenancy Act*. The Landlord was ordered to pay the Tenant a total of \$1,503.82, by November 19, 2024.
8. The Landlord appealed Order LD24-362 on November 15, 2024 (the “Landlord’s Appeal”).
9. The Commission heard the Landlord’s Appeal on January 7, 2025, by way of telephone conference. The Landlord and the Tenant both participated in the hearing.

### **Tenant's Appeal – Docket LR25010**

10. On November 7, 2024, the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* with the Rental Office seeking rent owing for September 2024 and travel expenses, including gasoline and a Confederation Bridge toll.
11. The Rental Office heard the Landlord's application on January 21, 2025. On February 14, 2025, the Rental Office issued Order LD25-050, which ordered the Tenant to pay the Landlord \$868.96 for September 2024 rent, and travel expenses.
12. On March 5, 2025, the Tenant appealed Order LD25-050 to the Commission (the "Tenant's Appeal").
13. The Commission heard the Tenant's Appeal on March 25, 2025, by way of telephone conference, set to begin at 10:30am. The Tenant participated in the hearing.
14. When the hearing began, the Landlord was not on the call. Commission Staff called the Landlord at approximately 10:37am and followed up with an email at approximately 10:38am. At 10:40am the Commission decided to proceed with the Tenant's Appeal in the absence of the Landlord.

### **C. DISPOSITION**

15. The Landlord's Appeal (being Docket LR24081) is dismissed. Order LD24-362 is confirmed.
16. Further, the Tenant's Appeal (being Docket LR25010) is also dismissed. Order LD25-050 is confirmed.

### **D. ANALYSIS**

#### **Landlord's Appeal – Docket LR24081**

17. The issue for the Commission to consider in respect of the Landlord's Appeal is whether the Rental Office erred in Order LD24-362 in finding that the Tenant was entitled to a double return of her security deposit in accordance with the provisions of the *Residential Tenancy Act*.
18. Order LD24-362 allowed the Tenant's application on the basis that the Landlord had not complied with the requirements of section 40 of the *Residential Tenancy Act* respecting the return of the security deposit. Order LD24-362 made a finding that the tenancy between the parties ended on September 30, 2024, and the Landlord then had 15 days to either return the security deposit or make application to the Rental Office to retain it. The Rental Officer determined that the Landlord had done neither and, therefore, was required to pay the Tenant double the security deposit in accordance with subsection 40(4) of the *Act*.
19. The Landlord's Notice of Appeal to the Commission alleges that after securing a new lease for the Rental Unit, he had called the Rental Office multiple times to ask about how to

handle the security deposit, but that he was informed his deadline for making application had already passed on September 15, 2024. He states that, based on this information, he did not file an application with the Rental Office.

20. At the hearing before the Commission, the Landlord gave testimony consistent with his claims on the Notice of Appeal. He said that sometime between, approximately, September 18<sup>th</sup> and 21<sup>st</sup> he called the Rental Office and was given information that the deadline to make application for the security deposit was September 15, 2024. It was only when Order LD24-362 was issued did he realize he actually had until October 15, 2024.
21. The documentary evidence before the Commission included call logs, submitted by the Landlord, that highlighted calls he made to the Rental Office. On our review, the call logs show that the Landlord made six outgoing calls to the Rental Office between September 23<sup>rd</sup> and October 1<sup>st</sup>, 2024. We accept that the Landlord may have been mistaken about the exact dates he called the Rental Office.
22. The documentary evidence before the Commission also includes records from the Rental Office in respect of phone calls with the Landlord. The records include notification of two voicemails from the Landlord and two entries in the Rental Office's "events tracking system".<sup>1</sup> The voicemail notifications were received on September 23<sup>rd</sup> and 24<sup>th</sup>. The evidence also included two audio recordings of the voicemails left by the Landlord. They are brief, and simply ask for a call back. The entries in the events tracking system are dated October 1<sup>st</sup> and 2<sup>nd</sup> and provide a bit more detail.
23. The first entry, dated October 1<sup>st</sup>, comments that Rental Office staff attempted to return the Landlord's call, but that "no voicemail was initialized." The second entry, dated October 2, 2024, includes the following comment:<sup>2</sup>

[...]

Sept 18 re rented[.]

Discussed 15 days from end of tenancy for LL to make a claim against SD.  
Discussed T filing against the LL for possible double.

LL wants to wait it out and see what T does.

24. Perhaps most importantly, we also take note of an email from the Landlord to the Residential Tenancy Officer who heard the matter, dated October 22, 2024, that does not mention any calls with the Rental Office. In fact, the email states "no one had ever reminded me of the deadline before" and concludes with "[I] just wanted to withhold her deposit to count as my rent for September."
25. Based on this evidence, we are not satisfied that the Landlord failed to file an application to retain the security deposit because he received incorrect information from the Rental Office. First, we accept that the note made by Rental Office staff on October 2, 2024, is likely an accurate description of the conversation, given that it is a contemporaneous

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<sup>1</sup> The records do not describe the Landlord by name, but they each indicate the same phone number as listed on the call logs submitted by the Landlord.

<sup>2</sup> We understand the notation "LL" to mean landlord, "T" to mean tenant and "SD" to mean security deposit.

account of the conversation between the two parties. Second, the Landlord's email to the Residential Tenancy Officer on October 22, 2024, does not refer to any conversations with or mis-information from Rental Office staff, and instead states "no one had ever reminded me of the deadline before".

26. Accordingly, the Commission agrees with the outcome of Order LD24-362. The Landlord has acknowledged that he did not make application to the Director to retain the security deposit at any time, either before or after October 15, 2024. Further, despite the Tenant making application to the Director before the 15-day time limit elapsed, the *Act* does not account for this. Subsection 40(1) makes it clear that the onus is on landlords to bring proceedings to prove their right to the tenant's security deposit rather than putting the onus on the tenant to bring proceedings to get the security deposit back.<sup>3</sup>
27. The language of section 40(4) is non-discretionary.<sup>4</sup> Both the Commission and the Rental Office are administrative bodies created by statute and are bound to apply the legislation as written. In this case, the Landlord did not comply with the requirements of the *Residential Tenancy Act* and did not file an application with the Rental Office to make a claim against the security deposit within 15 days. Therefore, the consequences set out in subsection 40(4) apply.
28. In conclusion, the Tenant is entitled to a payment from the Landlord of double the amount of the original security deposit in accordance with the provisions of the *Residential Tenancy Act*, plus accrued interest on the original (non-doubled) deposit amount. The amount owing for double security deposit is:

Security Deposit	\$750.00
Interest on Security Deposit <sup>5</sup>	\$11.92
Double Security Deposit per s. 40(4)	<u>\$750.00</u>
Total	<b>\$1,511.92</b>

#### **Tenant's Appeal – Docket LR25010**

29. The issue for the Commission to consider in respect of the Tenant's Appeal is whether the Rental Office erred in Order LD25-050 in finding that the Tenant must pay the Landlord an amount for rent (for September 2024) and travel expenses.
30. Order LD25-050 allowed the Landlord's application for September 2024 rent and travel expenses on the basis that the Tenant failed to give appropriate notice to end the tenancy agreement in accordance with the *Residential Tenancy Act* and the Landlord could not re-rent the Rental Unit until October 1, 2024.
31. The Tenant's Notice of Appeal to the Commission claims that she should not be responsible for rent and other expenses as she ended the lease before the start date and never occupied the Rental Unit.

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<sup>3</sup> Citing from *Brown v. British Columbia (Residential Tenancy Branch Tribunal)*, 2010 BCSC 861, at para 27.

<sup>4</sup> Citing from *Abboud v. Jung*, 2020 BCSC 736, at para 88.

<sup>5</sup> Calculated from August 8, 2024, to the date of this Order.

32. At the hearing before the Commission, the Tenant testified that she gave the Landlord notice on August 31<sup>st</sup> that she would not be moving into the Rental Unit. She stated that she did not have 30 days to notify the Landlord of her change in plans due to a family emergency. She said that up to that point she had not paid any rent, only the security deposit. The Tenant accepted that the Landlord may have suffered some losses, but that he should have had someone move in before October 1<sup>st</sup>. She testified that she had put the Landlord in contact with an individual who was prepared to move into the Rental Unit immediately, but that he responded to that person that he had already found someone else.

33. The Commission agrees with and adopts the findings in Order LD25-050. The Residential Tenancy Officer thoroughly reviewed the evidence before him and considered the relevant issues and application of the *Residential Tenancy Act*. On our review, the Tenant did not provide additional evidence or make any new arguments unique to what was put forward at the Rental Office hearing, so we see no need to disturb the findings of Order LD25-050.

34. Accordingly, we find that the Tenant must pay the Landlord:

September 2024 rent	\$750.00
Travel expenses	<u>\$118.96</u>
Total	<b>\$868.96</b>

## E. CONCLUSION

35. The Landlord's Appeal is dismissed. Order LD24-362 is confirmed. The Landlord must pay to the Tenant an amount equal to double the security deposit in accordance with the provisions of the *Residential Tenancy Act*, plus accrued interest on the original (non-doubled) deposit amount, for a total of \$1,511.87.

36. The Tenant's Appeal is dismissed. Order LD25-050 is confirmed. The Tenant must pay the Landlord rent for September 2024 and travel expenses in the amount of \$868.96.

37. In conclusion, a set-off of the amounts owing in favour of both parties results in the Landlord owing the Tenant:

Award in favour of Tenant (Docket LR24081)	\$1,511.92
Award in favour of Landlord (Docket LR25010)	<u>(\$868.96)</u>
<b>Total owing to Tenant:</b>	<b>\$642.96</b>

**IT IS ORDERED THAT**

1. The Landlord’s Appeal is dismissed. Order LD24-362 is confirmed.
2. The Tenant’s Appeal is dismissed. Order LD25-050 is confirmed
3. The Landlord must pay the Tenant \$642.96 by April 25, 2025.

**DATED** at Charlottetown, Prince Edward Island, 11<sup>th</sup> day of April, 2025.

**BY THE COMMISSION:**

*[sgd. Kerri Carpenter]*

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Kerri Carpenter, Vice Chair

*[sgd. Murray MacPherson]*

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Murray MacPherson, 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.