PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: **May 15, 2025**
Dockets: **LR25008**
Type: **Rental Appeal**

INDEXED AS: Dana Ellis and Priscilla Ellis v. Hannah Bridger and Dazey Steinman
2025 PEIRAC 18 (CanLII)
Order No: LR25-16

BETWEEN:

Dana Ellis and Priscilla Ellis (the "Landlords")

Appellants

AND:

Hanna Bridger and Dazey Steinman (the "Tenants")

Respondents

ORDER

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 appeal was heard by the Commission on April 1, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the Landlords must pay the Tenants $2,835.15 by March 7, 2025.

B. BACKGROUND

2. This appeal concerns a rental unit located at 90 King Street, Summerside, PEI (the "Rental Unit"). On December 1, 2022 the parties entered into a written, one-year fixed-term tenancy agreement. The parties renewed the fixed-term December 1, 2023 for another one-year. A security deposit of $1,500.00 was paid at the beginning of the tenancy. Rent was $1,500.00 due on the first day of the month.

3. On September 1, 2024 the Tenants vacated the Unit and the tenancy ended by mutual agreement.

4. On September 17, 2024 the Landlords filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Residential Tenancy Office (the "Rental Office"). The Landlord Application sought to retain the security deposit plus interest.

5. On November 14, 2024, the parties did not call into the scheduled hearing. The hearing was adjourned.

6. On December 16, 2024 the Rental Office emailed the parties a new Notice of Hearing, scheduled for January 9, 2025.

7. On January 2, 2025 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Tenant Application") with the Rental Office. The Tenant Application sought the return of the security deposit, double the security deposit and applicable interest.

8. An updated Notice of Hearing, including the Tenant Application was emailed to the parties, scheduled for January 9, 2025. Collectively, the Landlord Application and the Tenant Application are referred to as the "Applications."

9. On January 9, 2025 the Tenants and one of the Landlords (the "Landlord") called into the hearing for determination of the Applications. The Landlord was representing the Landlords.

10. At the beginning of the hearing, the Residential Tenancy Officer permitted the Landlord Application to be amended to include a request for compensation in the amount of $1,987.07. The amendment was permitted under clause 80(3)(f) of the *Residential Tenancy Act* (or the "Act").

11. On February 7, 2025, the Residential Tenancy Office issued Order LD25-041, which ordered the Landlords to pay the Tenants $2,835.15 by March 7, 2025.

12. The Landlords appealed Order LD25-041 on February 24, 2025.

13. The Commission heard the appeal on April 1, 2025, by way of telephone conference. The Landlords and the Tenants attended the hearing.

14. The applicable legislation is the *Residential Tenancy Act*, cap. R-13.11 (the "*Act*").

C. DISPOSITION

15. The Commission allows the appeal and awards the Landlords the sum of $1,987.07 for the materials and labour to replace the porch floor and surrounding wall area. The Commission confirms the award of $240.00 for cleaning and garbage removal. The Tenants owe the Landlords a total sum of $2,227.07.

16. The Commission confirms that the Landlords did not comply with section 40 of the Act and therefore the Landlords must compensate the Tenants for double the security deposit. The Commission also updates the interest calculation on the original security deposit. The Landlords owe the Tenants a total sum of $3,085.12

17. In accordance with the preceding paragraphs, the net sum owed by the Landlord to the Tenants is $858.05.

D. ISSUES

18. The issue is whether the Landlords should be compensated for labour and materials associated with repair of damage to the porch floor.

E. SUMMARY OF EVIDENCE

19. The Landlords acknowledged that they were unaware of the requirements of section 40 of the Act and failed to comply with the requirement to apply within 15 days to the Director, often referred to as the Rental Office, to claim against the security deposit. Accordingly, the Landlords accept the double security deposit award set out in Order LD25-041.

20. The Landlords claim for the cost of labour and materials to associated with replacing the porch floor. This included the cost of new flooring, new plywood subfloor, new trim and baseboard, as well as new drywall and paint.

21. The Landlords testified that they had purchased the Rental Unit shortly before the tenancy began. They testified that the Rental Unit, including its porch, had been renovated by the previous owner. The tenancy commenced on December 1, 2022 and the Landlords had no previous tenants for the Rental Unit. Specifically related to the porch, the Landlords have submitted that the porch flooring was new when the tenancy commenced. The Tenants do not dispute this.

22. The Landlords testified that the flooring in the porch was a laminate flooring of the same kind as in the kitchen. The Landlords testified that after the Tenants moved out there was a strong smell of cat urine in the porch. The Landlords tried cleaning the porch floor, including the use of bleach but the smell was still strong. The Landlords ripped up the floor and discovered that the subfloor was wet with what smelled like cat urine. The Landlords then had to rip up the subfloor. There was also urine damage to the lower

drywall and the baseboard and trim. The Landlords testified that the replacement flooring was vinyl glue down plank flooring.

23. The Landlords acknowledged that they had no pictures of the porch floor at the outset of the tenancy. However, they submit that the porch was renovated and was in a condition similar to that of the other rooms shown in the Tenant's photos (Exhibit A-4). They further submit that the Tenants were aware of the porch issues, as referenced in a text message on page 59 (see Exhibit E-13).

24. The Tenants submitted that there were no pictures of the porch floor prior to the Tenants moving in, and the only picture of the porch floor from after the Tenants moved out was that found on page 55 (part of the photographs contained in Exhibit E-12). The Tenants testified that they noticed lifting damage on the kitchen floor and the upstairs bathroom floor but they did not observe lifting damage on the porch floor. The Tenants maintain that the main area of damage shown on page 55 was not where the cat litter boxes were located. The Tenants testified that they were not aware of any damage to the porch floor when they moved out on September 1, 2024. The Tenants testified that they cleaned the litter boxes and they cleaned the porch floor on a regular basis. They testified that they used a special enzyme clearer appropriate for cat urine. They testified that the damaged area of the porch floor was where they had located their shoe rack. They testified that the only urine they had noticed on the porch floor was over the sides of the litter boxes on occasion and they cleaned it up as soon as they noticed it. The Tenants did not dispute that the porch was newly renovated when they moved in.

25. The Tenants submitted that they feel that Order LD25-041 was fair. They submit that they did not cause damage to the porch floor. They submit that they were aware of and had apologized for the smell. They stated that they used the porch responsibly and for its intended purpose.

F. ANALYSIS

26. The Commission allows the appeal and awards the Landlords their claim for the labour and materials associated with replacing the porch floor. The reasons follow.

27. In Order LD25-041, the Residential Tenancy Officer referenced and quoted from Commission Order LR25-02:

> *The Commission wishes to remind landlords that in order to fully support claims for damage and or necessary cleaning it is essential to have pictures for both the beginning and the end of the tenancy. Pictures at the beginning of the tenancy are necessary to establish a reference point with respect to condition and cleanliness.*

28. The Residential Tenancy Officer then went on to find at paragraphs [31] and [32]:

> *[31] The evidence submitted by the Landlords demonstrates damage to the floors and walls. However, the evidence does not establish that the Tenants caused the damaged or establishes the extent of the damage from the beginning of the tenancy. The text messages do not establish that the*

> *Tenants admitted to causing the damage. The Tenants only admit and apologize for the smell of cat urine and their efforts to remove it.*
>
> *[32] As a result, I cannot find, on a balance of probabilities, that the Tenants have caused the damage to the floor. However, I find that the evidence submitted by the parties establishes that the Unit required additional cleaning to remove the strong odour of cat urine and remove garbage.*

29. Upon hearing this appeal and considering the evidence, the Commission comes to a different conclusion.

30. First, with respect to the Commission's general statement in Order LR25-02, that statement was appropriate in the facts of that particular appeal. However, the facts and evidence in this case are different, and that statement can (and should) be distinguished to meet those different circumstances.

31. For example, in the present appeal, the Landlords have submitted that the porch flooring was new when the tenancy started. The Tenants do not dispute this. The Tenants had no complaints about the condition or smell of the porch floor when they moved in. Therefore, despite having no reference photos from the beginning of the tenancy, it is undisputed in the present case that the porch flooring was new when the Tenants moved in only a few years ago.

32. Further, in the present appeal, the Landlords claim that the damage to the porch floor, unlike the kitchen and bathroom floor, was a matter of a strong smell rather than visual lifting. Also, the damage depicted in the picture at page 55 of Exhibit E-12 appears to show wet spots on the plywood subfloor, underneath the laminate flooring. Accordingly, it is not likely that before and after pictures would have contributed much to the determination of this claim.

33. For these reasons, this appeal may be distinguished on its facts from the appeal before the Commission in Order LR25-02. With the greatest respect to the panel members in Order LR25-02, while before photographs can be helpful in certain cases, the *Act* does not require before and after photographs. The question to be answered is whether the Landlord has proven, on a balance of probabilities, that the damage claimed by the Landlord actually occurred and was caused by the Tenant. Photographic evidence is one tool that is often useful in establishing such claims.

34. The Commission therefore qualifies its previous statement in Order LR25-02 to remind landlords and tenants that, as a best practice, photographs should be taken at the beginning and end of a tenancy, as an aid in supporting claims for damage and/or cleaning. In addition, the condition inspection forms completed at the start and end of a tenancy, as required by sections 18 and 38 of the Act, should be completed and signed by both the landlord and tenant. Ultimately, whether before and after pictures are necessary in a particular case is a matter to be determined in each case, having regard to other documentary evidence, the oral evidence presented by both parties at the hearing (before the Rental Officer or the Commission), and the nature of the damages and/or cleaning costs claimed by the landlord.

35. In the present case, Exhibit E-13 is a screenshot of a text message exchange between the parties and is helpful in determining this appeal. The portion that appears to relate to the porch flooring reads (from the Tenants):

> *We bought cat specific cleaner and scrubbed the floors multiple times, but I apologize that it didn't take care of the smell and feel terrible about it. I don't want to place blame on him, but [redacted name of roommate] was not doing much to clean up after himself and his cat before he moved out so me and Dazey did the best we could after he left. I'm sorry for that and feel terrible about the mess and smell.*

36. From the text, the Commission learns that the Tenants were aware of the smell issue and had attempted to clean without resolving the smell.

37. The Commission is satisfied that a strong smell, in this case cat urine, which could not be removed even after reasonable attempts to clean and remove the odour, constitutes damage to the premises. In this case, we are satisfied that the damage occurred during the tenancy. The Landlord's evidence is that the smell could not be cleaned and still remained even after reasonable attempts to remove it using recommended cleaning products. Therefore, we are satisfied it was reasonable for the Landlord to remove and replace the effected materials – being the flooring, the plywood subfloor, the baseboard, and some trim and drywall – in order to fully remove the odour from the Rental Unit.

38. Accordingly, the Commission finds that the Landlords have established their claim in the amount of $1,987.07 for the materials and labour to replace the porch floor and surrounding wall area (See Exhibit E-14, Invoice from D & P Holdings).

39. The Commission agrees with the award set out in Order LD25-041 of $240.00 for cleaning and garbage removal.

40. The Commission finds that the Tenants owe the Landlord the total sum of $ 2,227.07 ($1,987.07 + $240.00).

41. The determination of the security deposit set out in Order LD25-041 of $3,075.15 (security deposit of $1500, plus a further $1500 for the double award as a result of section 40 non-compliance, plus interest on the original security deposit) has not been appealed and the Commission upholds that decision, but adds interest in the amount of $9.97 for the period February 8, 2025 to the date of this present Commission Order.

42. It is the practice of both the Rental Office and the Commission to offset awards. Accordingly, the Commission hereby orders the Landlords to pay the Tenants the net sum of $858.05, representing ($3,075.15 + $9.97) - $2,227.07.

G. CONCLUSION

43. The appeal is allowed. The Commission approves the Landlords' claim for labour and materials for the porch floor repair. The Commission varies the net amount the Landlords must pay the Tenants as determined in Order LD25-041 to the net sum of $858.05.

IT IS ORDERED THAT

1. **The appeal is allowed.**

2. **Order LD25-041 is varied to add the Landlords' claim for labour and materials associated with the repair of the porch floor.**

3. **The Landlords must pay the Tenants the net sum of $858.05 by May 30, 2025.**

DATED at Charlottetown, Prince Edward Island, 15th day of May, 2025.

BY THE COMMISSION:

(sgd. Kerri Carpenter)
Kerri Carpenter, Vice Chair

(sgd. Murray MacPherson)
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.