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

Date Issued: **June 24, 2025**
Dockets: **LR 25009**
Type: **Rental Appeal**

INDEXED AS: Scott LeLacheur and Vera LeLacheur v. Lacey Laybolt and Dustin Chappell
2025 PEIRAC 25 (CanLII)
Order No: LR25-23

BETWEEN:

Scott LeLacheur and Vera LeLacheur (the "Landlords")

Appellant

AND:

Lacey Laybolt and Dustin Chappell (the "Tenants")

Respondent

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 March 25, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the Landlord's Application be denied.

B. BACKGROUND

2. This appeal concerns a rental unit located at 6B Woodlane Drive, Stratford, PEI (the "Rental Unit"). The Rental Unit is one side of a side-by-side duplex (the "Residential Property") owned by the Landlords since 1989.

3. In October 2005, the parties entered into an oral month-to-month tenancy agreement for the Unit. A $300.00 security deposit was paid at the beginning of the tenancy. Rent is $721.00 due on the first day of the month.

4. On November 1, 2024, the Landlords filed a *Form 2 (B) Landlord Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks a monetary order in the amount of $4,396.29 for compensation for undue damage to the driveway of the Rental Unit.

5. On January 7, 2025, the Landlords and the Tenants participated in the teleconference hearing for determination of the Application. The parties confirmed receipt of the Evidence Package and that all documents submitted to the Rental Office were included.

6. On February 5, 2025, the Residential Tenancy Office issued Order LD25-038, which denied the Application.

7. The Landlords appealed Order LD25-038 on February 25, 2025.

8. The Commission heard the appeal on March 25, 2025, by way of telephone conference. The Landlords, Scott LeLacheur and Vera LeLacheur, as well as the Tenants, Lacey Laybolt and Dustin Chappell, attended the hearing via telephone conference.

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

C. DISPOSITION

10. The appeal is allowed in part. The Commission varies Order LD25-038 to award a portion of the Landlord's damage claim.

D. ISSUES

11. The issue on this appeal is whether the Tenants are responsible for damage to the driveway, beyond reasonable wear and tear, such that they are responsible for necessary repair costs.

E. SUMMARY OF EVIDENCE

12. The Landlords submit that the driveways for both sides of the duplex were repaved and extended in September 2020. The original driveways had been paved in the 1970s. In September 2020 the driveway footprint was expanded and a new shale base, gravel and two inches of asphalt installed. Both sides were paved to the same standard. There are no issues with the driveway for the other side of the duplex.

13. The Landlords testified that the issues with the driveway for the Rental Unit became apparent in April 2023 when a driveway sealing contractor brought the issues to the Landlords' attention. The issues consisted of some oil staining and divots (tire depressions) on parts of the driveway for the Rental Unit.

14. The Landlords hired a paving contractor to treat the oil stains, fill in the divots and top off the entire driveway with another two-inch layer of asphalt at a cost of $3,450.00 including HST (Exhibit E-5). The Landlords then purchased topsoil for $207.00 including HST (Exhibit E-6) and the Landlord's own company then spread the topsoil and sowed grass seed so that the lawn would now be level with the edges of the newly raised (extra two-inch layer of asphalt) driveway. The paving contractor had advised the Landlords that this soil and grass leveling was necessary for the durability of the driveway.

15. The Landlords testified that they personally did the spreading and seeding work on behalf of their company. They testified that they charged by the hour, did not keep records of their time, and estimate that it probably took 12 hours of time for which they charged $600.00. They spent $42.86 on grass seed. Their company provided them with an invoice dated November 21, 2023 (Exhibit E-4) for $642.86 plus $96.43 HST for a total of $739.29. The Landlords seek the sum of $4,396.29 (total of $3,450.00, $207.00, and $739.29) as they believe the damage, though unintentional, was caused by the actions of the Tenants.

16. The Landlords submitted that the snow removal tractor had a weight far in excess of what would be associated with a vehicle to be parked on a residential driveway. They submit that the issue would then be compounded if that tractor stayed put for a while during a mild winter. The Landlords submit that the oil or fluid leaks were either from the Tenants' vehicles or from vehicles owned by their guests.

17. The Tenants testified that they have been tenants at the Rental Unit for approximately 20 years during which time they had a reasonably good relationship with the Landlords. The Tenants stated that they look after the Rental Unit and had sought and received permission in 2008 to keep a snow removal tractor there during the winter months as the Tenant Mr. Chappell has been employed performing snow removal for over 17 years. The Tenants testified that in 2023 the Landlords requested that they no longer park the tractor there and they complied with that request.

18. The Tenants testified that their vehicles and the snow removal tractor were all newer and did not leak oil. The Tenants submit that the asphalt may have been defective, as even the Tenant Ms. Laybolt's compact sized car, which she testified weighs approximately 2700 lbs, left some "sink spots".

19. The Tenants submit that the Landlords did not consult them about the driveway issues nor did they obtain another quote for the cost of the work. Instead, the Landlords decided to fix the issue on their own and then presented the Tenants with the bills.

F. ANALYSIS

20. The Commission has determined that the Rental Office erred in not awarding a portion of the Landlords' claim. The reasons and particulars for this determination follow.

21. The *Residential Tenancy Act* provides that a tenant is responsible for "undue damage" to a rental unit that is caused by the actions or neglect of the tenant (s. 28(4)). Tenants are not responsible for reasonable wear and tear. Where a landlord makes application to the Director claiming damages, the onus is on a landlord to establish that there was undue damage, beyond ordinary wear and tear, caused by the tenant(s).

22. First, with respect to alleged damage caused by the Tenants' car and pickup truck, the Commission finds that such vehicles are reasonably expected to be parked in a residential driveway and we are not satisfied that the Landlord has proven that any divots, tire depressions or sink spots were "undue damage" beyond ordinary wear and tear.

23. We make a similar finding in respect of the oil leaks which had stained the driveway – in this case, we are not satisfied that the Landlord has proven such leaks are beyond ordinary wear and tear.

24. The evidence before the Commission was that the snow removal tractor was a commercial or farm grade type of snow removal tractor used for contracted snow removal as part of a snow removal business.

25. With respect to the damage caused by the commercial snow removal tractor at the heart of this appeal, the Commission views such a vehicle as being atypical of a vehicle expected to stored or parked at a residential driveway Despite the Tenants having permission to keep the tractor on the property, the damage caused by parking such a tractor on a residential driveway for an extended period would go beyond reasonable wear and tear and constitute "undue damage".

26. The Commission notes that the driveway in question was constructed to a single two-inch layer standard in 2020 but was then upgraded to add a second two-inch layer in 2023.

27. The Commission notes that the invoice for the paving work in Exhibit E-5 appears to cover both the repair and the upgrade as it states:

> *Level low areas with asphalt base then lay 2" of asphalt B mix. Area: 32' x 20.9' $3,000.00*

28. The invoice does not clearly breakdown how much of the $3,000.00 [before HST] is apportioned to the leveling of the low areas versus the upgrade of an extra layer of asphalt.

29. In the absence of evidence from a paving professional, the Commission is not satisfied that the addition of the extra layer of asphalt (in addition to the levelling of the low areas) was a necessary expense to repair the damage claimed. Simply put, the funds they spent in 2023 not only repaired damage but also gave them an upgraded driveway now built to a higher standard than what they had in 2020.

30. The Commission finds that the topsoil, spreading and seeding were necessitated by the added layer of asphalt and thus were not necessary steps to repair the tractor damage.

31. The Commission finds that the Tenants should have been aware of the damage starting to occur, particularly that caused by the tractor.

32. The Commission finds that the Landlord should have consulted with the Tenants before seeking a repair, and an enhancement or upgrade, of the driveway.

33. The Commission determines that the Tenants are responsible for the cost of the repair to level the low areas caused by the tractor because, in the Commission's opinion, this damage was beyond reasonable wear and tear.

34. Without a detailed invoice from the paving contractor, testimony from a well qualified employee of such contractor or other such helpful evidence, the Commission is left to determine how much of the $3,450.00 invoice should be paid by the Tenants. Given that filling the depressions left by the tractor would likely be a much smaller endeavor than adding an extra layer to an entire 32 by 21.9-foot surface, the Commission awards a sum of $862.50, representing 25% of the invoice total, to the Landlords.

35. The Commission declines to award any sum for the cost of the topsoil, soil leveling and seeding as these steps were only necessary for the driveway upgrade from single two-inch layer to double two-inch layers. Further, they are not responsible for any cost associated with repairing the alleged oil stains.

G. CONCLUSION

36. The appeal is allowed in part. Order LD25-038 is varied to allow for a damage award for damage to a driveway caused by a non-residential type vehicle. The Commission orders the tenants to pay the sum of $862.50 to the Landlords.

IT IS ORDERED THAT

1. **Order LD25-038 is varied in part.**

2. **The Tenants shall pay the Landlords the sum of $862.50 by July 11, 2025.**

DATED at Charlottetown, Prince Edward Island, 24th day of June, 2025.

BY THE COMMISSION:

[sgd. Kerri Carpenter]
Kerri Carpenter, Vice Chair

[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.