



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

**Date Issued: June 26, 2025**

**Dockets: LR25011**

**Type: Rental Appeal**

INDEXED AS: Yan (Pamela) Han and Simon McNeil v. Melissa McKinnon and Rob McKinnon

2025 PEIRAC 27(CanLII)

Order No: LR25-25

**BETWEEN:**

Yan (Pamela) Han and Simon McNeil (the “Landlords”)

**Appellant**

**AND:**

Melissa McKinnon (aka Melissa Hamer) and Rob McKinnon (the “Tenants”)

**Respondent**

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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

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Commission Clerk

Island Regulatory and Appeals Commission

## A. INTRODUCTION

1. This appeal was heard by the Commission on April 8, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the Tenants will pay the Landlords the net sum of \$262.69 by April 3, 2025.

## B. BACKGROUND

2. This appeal concerns a rental unit located at 21 Jessie Street, Cornwall, PE (the "Rental Unit"). The Tenants entered into a written, fixed-term tenancy agreement for the Unit from September 1, 2022, to August 31, 2023. The tenancy agreement then continued as a month-to-month agreement. Rent was \$2,000.00 per month, due on the first day of the month. A security deposit of \$2,000.00 was paid on September 1, 2022.
3. The Tenants moved out of the Rental Unit on November 1, 2024.
4. On November 12, 2024, the Landlords filed two *Form 2(B) Landlord Applications to Determine Dispute* with the Rental Office (the "Applications"), with one Tenant being named on each application. The Applications seek to keep the security deposit and also seek additional compensation.
5. On January 16, 2025, the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for February 13, 2025.
6. On February 13, 2025, the Rental Office held a hearing of the Applications. The Landlords called into the hearing, acknowledged receipt of the evidence package, and confirmed that all documents submitted to the Rental Office were included. The Tenants did not join the hearing. The hearing proceeded in the Tenants' absence. During this hearing, the Landlords submitted additional evidence, which was also provided to the Tenants. No further submissions were received from either party.
7. The Residential Tenancy Office issued Order LD25-072 on March 3, 2025, which ordered that the Landlords will keep the Tenants' security deposit of \$2,000.00 for October 2024 rent and the Tenants will pay the Landlords the net sum of \$262.69 by April 3, 2025.
8. The Landlords appealed Order LD25-072 on March 14, 2025.
9. The Commission heard the appeal on April 8, 2025, by way of telephone conference. The Landlords, Simon McNeil and Yan (Pamela) Han attended the telephone hearing. The Tenants did not attend the hearing.
10. The Commission is satisfied that the Tenants were served with the Notice of Appeal via email and had sufficient notice of the appeal hearing. They were sent emails from Commission Staff dated March 18, April 3 and April 8, 2025 setting out the date, time and method of participation. We are satisfied that the email addresses used to contact the Tenants are those that the Landlord had previously used to correspond with the Tenants as recently as October 2024 (see, for example, Exhibits A-4 through A-10). In addition, Commission staff attempted to call one of the Tenants on April 8, 2025 just before the hearing commenced. For these reasons, we are satisfied that the Tenants had sufficient notice of the hearing and we determined it appropriate to proceed in their absence.

## **C. DISPOSITION**

11. The appeal is allowed. The Commission awards a claim to the Landlords for damage to the Rental Unit caused by the Tenants. The Commission also awards the Landlords one month's lost rental income.

## **D. ISSUES**

12. The issue for the Commission on this appeal is whether the Landlords have established that the Tenants caused undue damage to the Rental Unit.

## **E. SUMMARY OF EVIDENCE**

13. The Landlords testified that, at the hearing before the Rental Office, they did not understand the importance of establishing the pre-tenancy condition of the Rental Unit. To rectify this, they filed photographs of the pre-tenancy condition of the Rental Unit with the Commission (see Exhibit A-3, hereinafter described as the "Before Photos"). They have also filed text messages whereby they submit that one of the Tenants took responsibility for the damage. This new evidence is set out in Exhibits A-3 to A-12, inclusive.
14. The Landlords testified that they purchased the Rental Unit in 2018. They had previous tenants who moved out on August 31, 2022. The Tenants then moved in on September 1, 2022.
15. The Landlords further testified that, prior to the previous tenants moving out, they were uncertain whether they should sell the Rental Unit or rent it again. They consulted with a real estate agent to determine market value. Pictures of the Rental Unit were taken by the real estate agent on August 2, 2022 (see Exhibit A-3). The Landlords testified that when the previous tenants eventually moved out at the end of September 2022, the Rental Unit was in even better condition than depicted in the Before Photos.
16. As part of their testimony before the Commission, the Landlords compared the Before Photos in Exhibit A-3 with the photographs taken after the tenancy with the Tenants ended (see Exhibits E-8 and E-10, hereinafter collectively referred to as the "After Photos"). They submitted that this comparison establishes that the Tenants caused damage to walls, floors, baseboards, doors, trim and the handrail. They submitted that much of the damage appeared to be caused by the Tenants dogs, pointing out heavily clawed floors and trim and heavily chewed doorknobs, bathroom countertop and basement handrails. They testified that Exhibit E-11 is the invoice for refinishing and repair of the floors totalling \$7,956.63. Exhibit E-13 is the invoice for other repairs, such as walls, doors, baseboards, trim, countertop and handrail, in the total amount of \$12,926.00.
17. The Landlords testified that everything that was damaged by the Tenants was repaired. They testified that a dehumidifier was left by the previous tenants, and that the Tenants took it with them and the Landlords have not replaced it. The lawnmower, which had been left in the shed unlocked, was also removed and the Landlords have not replaced it.

18. The Landlords testified that repairs started in early November 2024 and were not complete until February 1, 2025. They stated that they were unable to rent the Rental Unit during these four months.
19. As noted above, the Tenants did not participate at the appeal hearing and therefore did not provide any evidence.

## F. ANALYSIS

20. 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).
21. In the present case, we are satisfied that the Landlords have discharged that onus and that the Tenants were responsible for undue damage in the Rental Unit. The Commission, therefore, allows the Landlords’ appeal for the reasons that follow.
22. The essence of Order LD25-072 was that the Landlords’ claims for damage to the Rental Unit and loss of rental income during the repair period could not be awarded as the Landlords did not provide evidence of the condition of the Rental Unit at the time the Tenants moved in. The Commission has since commented in Order LR25-16 that “before photographs” are a best practice, but whether they are necessary to in a particular matter will be determined in each case, having regard to other documentary evidence, oral evidence presented at the hearing, and the nature of the damages and/or cleaning costs claimed.
23. Appeals to the Commission per subsection 89(8) the *Residential Tenancy Act* are heard by way of a re-hearing, and the Commission has the discretion to receive and accept new evidence and information, and to make any decision or order that the Director is authorized to make. The statutory requirement for a re-hearing requires that the Commission make its own decision based on the entire record.<sup>1</sup>
24. In this appeal, the Landlords have provided additional evidence to address the condition of the Rental Unit prior to the beginning of the tenancy. Exhibit A-3 provides photographs and commentary from the real estate agent, dated August 2, 2022. Based on this evidence, the Commission is satisfied that the Rental Unit was in good and ordinary condition prior to the Tenants moving in September 1, 2022.
25. We also note that while the Commission has previously commented on the necessity of move-in and move-out condition inspection reports, as this tenancy commenced in September 2022, prior to the coming into force of the new *Residential Tenancy Act*, those reports were not mandatory in this case.<sup>2</sup>
26. With respect to the condition of the Rental Unit, we are satisfied that the Tenants are responsible for undue damage during the term of the tenancy. Based on the post-tenancy pictures, the Commission finds that the interior of the Rental Unit was left in very poor

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<sup>1</sup> Perry v. Kings Square Affordable Housing, 2023 PESC 32, at para 22.

<sup>2</sup> *Residential Tenancy Act*, RSPEI 1988, R-13.11, s. 109.

condition. The photographs depict a Rental Unit that was very poorly cared for over a two-year period. For example, the photographs show broken countertop and missing door trim in the bathroom and damaged door knobs, doors and trim in various places throughout the Rental Unit. There was extensive damage to the hardwood flooring and stair treads and the Landlord testified that some flooring was damaged by dog urine. There was also damage to stair handrails that appear to have been chewed or otherwise damaged, damaged radiators, and holes in the drywall in more than one location. In addition to the damage, the Rental Unit was very dirty throughout and there was garbage and other debris left in the Rental Unit and the backyard.

27. An email exchange between the Landlords and Tenant (Melissa) on October 8, 2024, details that the Landlords first expressed concerns about the condition of the interior of Rental Unit following a “post-safety inspection” that occurred that day. The Landlords state that the Rental Unit is not suitable to move in a new tenant. In that exchange, the Tenant says she has contact information for a contractor who is prepared to do repair work and provides that to the Landlords (see Exhibit A-9).

28. Based on this exchange, we are satisfied that the Tenant (Melissa) was aware of the condition of the Rental Unit and that it needed significant repairs. She did not dispute this in the email exchange. Further, based upon the evidence from the Landlords of the pre-tenancy pictures that were taken in August 2022, we are satisfied that the undue damage depicted in the post-tenancy pictures was, on a balance of probabilities, caused by the Tenants during the term of the tenancy.

29. We will now move on to discussing compensation owed to the Landlords for the undue damage.

30. The Landlords submitted the following invoices for work carried out to repair the undue damage. The following are totals of each invoice:

Exhibit E-11 – floor repair = \$7,956.63

Exhibit E-12 – cleaning supplies = \$78.68

Exhibit E-13 – walls, doors, countertop, trim, railings and other repairs = \$12,926.00

Exhibit E-14 – hauling of junk/trash = \$287.50

Exhibit E-16 – dishwasher parts and repair = \$224.25

Total: **\$21,473.06**

31. The Landlords testified that they have owned the Rental Property since 2018, though we understand the house to be even older than that. As previously noted, the before photos depict a house that was in good and ordinary condition, though we note that it was not brand new.

32. The Commission has previously commented on what it must consider when determining amounts to be awarded to landlords where a tenant has caused undue damage. In Order LR24-06, the Commission commented on the concept of “betterment”. Generally speaking, the principle of betterment applies such that a party should not be put in a better position than they would have been had the particular wrongdoing not occurred.

33. As one example, in this case the flooring on the upper and main floors of the Rental Unit was damaged in certain areas. The repair work carried out consisted of fully refinishing both levels of flooring (we note that some portions were also repaired). It is certainly not uncommon in situations such as the present one, for it to be impossible to refinish only portions of the floor. However, while we accept that refinishing was necessary to repair the undue damage on *some portions* of the floor, the refinishing of the entire floor on both levels, nevertheless, puts the Landlords in the position of having fully refinished flooring, rather than flooring with many years of normal wear and tear on it.
34. Further, with respect to the necessary repairs to the walls, trim, doors, countertop, and other items, as claimed in the invoice at Exhibit E-13, we accept that it was necessary to repair that undue damage caused during the tenancy. However, we also note that the invoice refers to the replacement of trim, doors, railings and bathroom countertop. We are of the opinion that the replacement of these items invokes at least a certain degree of betterment as replacing used items with new tends to put the landlord in a better position than it would have been in had the items not been replaced.
35. In conclusion, we accept that the Rental Unit was in good and ordinary condition before the Tenants moved in and required significant repairs to after the tenancy ended. We accept that the total cost of those repairs was \$21,473.06. However, we nevertheless discount the total amount awarded to the Landlords as outlined below, to account for the normal wear and tear that was expected on the flooring, doors, trim and countertop, for example, before those items were fully refinished and replaced.

Exhibit	Invoice	Total	Discount	Award
Exhibit E-11	floor repair	\$7,956.63	25%	<b>\$5,967.47</b>
Exhibit E-12	cleaning supplies	\$78.68	50%	<b>\$39.34</b>
Exhibit E-13	walls, doors, countertop, trim, railings and other repairs	\$12,926.00	25%	<b>\$9,694.50</b>
Exhibit E-14	hauling of junk/trash	\$287.50	0%	<b>\$287.50</b>
Exhibit E-16	dishwasher parts and repair	\$224.25	0%	<b>\$224.25</b>
				<b>\$16,213.06</b>

36. We, therefore, award the Landlords the total sum of **\$16,213.06** to compensate them for the undue damage to the Rental Unit.
37. As the dehumidifier belonged to a prior tenant and was not replaced, and as the lawnmower's disappearance could not be directed linked to the actions of the Tenants and was also not replaced, the Commission will not award any claim for those two items.
38. Further, the Commission is satisfied based on the evidence before us that the Tenants did not pay rent for October 2024. As such, we award the Landlords \$2,000.00 for unpaid rent.

39. Finally, the Landlords also claimed additional compensation for the loss of rental income while the Rental Unit was being repaired. In respect of that claim, the Commission awards one month's loss of rental income in the amount of \$2,000.00.

40. For clarity, and as will be outlined below, we find that the Landlords may retain the Tenants' security deposit to offset the amount owing.

41. In sum, the Tenants must pay to the Landlords:

Repairs for undue damage:	\$16,213.06
October 2024 rent:	2,000.00
Lost rental income:	2,000.00
Minus security deposit:	(2,000.00)
Minus interest on security deposit: <sup>3</sup>	<u>(\$119.25)</u>
Total:	<b>\$18,093.81</b>

## G. CONCLUSION

42. The appeal is allowed. The Tenants must pay the Landlords **\$18,093.81**.

## IT IS ORDERED THAT

1. The appeal is allowed.
2. Order LD25-072 is varied.
3. The Tenants must pay the sum of **\$18,093.81** to the Landlords not later than July 11, 2025.

**DATED** at Charlottetown, Prince Edward Island, 26<sup>th</sup> day of June, 2025.

**BY THE COMMISSION:**

[sgd. Kerri Carpenter]  
Kerri Carpenter, Vice Chair

[sgd. Murray MacPherson]  
Murray MacPherson, Commissioner

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<sup>3</sup> Calculated from September 1, 2022 to the date of this Order.

## 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.