



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: July 10, 2025

Dockets: LR25013

Type: Rental Appeal

INDEXED AS: Alexander Poliakov and Alena Lisitsa v. 15647681 Canada Inc.

2025 PEIRAC 31 (CanLII)

Order No: LR25-29

BETWEEN:

Alexander Poliakov and Alena Lisitsa (the "Tenants")

Appellants

AND:

15647681 Canada Inc. (the "Landlord")

Respondent

ORDER

Panel Members:

Kerri Carpenter, Vice Chair
Pamela J. Williams, K.C., Chair

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 16, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in ordering the Tenants to pay the Landlord \$3,913.35 by May 12, 2025.

B. BACKGROUND

2. This appeal concerns a rental unit located at 3160 Brackley Point Road, Brackley Beach, PEI (the “Rental Unit”). The parties entered into a written, fixed-term tenancy agreement for the Rental Unit from November 1, 2024, to October 30, 2025. Rent of \$1,500.00 was due on the first day of the month. A \$1,500.00 security deposit was paid at the beginning of the tenancy.
3. On January 17, 2025, the Landlord’s representatives (the “Representatives”) served the Tenants with a *Form 4(A) Eviction Notice* with an effective date of February 6, 2025 (the “First Notice”) for unpaid rent for January 2025 of \$1,500.00.
4. On January 23, 2025, the Representatives served the Tenants with a *Form 4(A) Eviction Notice* with an effective date of February 28, 2025 (the “Second Notice”) for failing to comply with a material term of the tenancy agreement despite written warning.
5. On January 27, 2025, the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the “Tenant Application”) with the Residential Tenancy Office (the “Rental Office”) to dispute the First and Second Notices, to request a determination that the Landlord failed to repair or maintain the Rental Unit, and additional compensation of \$25,000.00.
6. On February 2, 2025, the Representatives served the Tenants with a *Form 4(A) Eviction Notice* with an effective date of February 22, 2025 (the “Third Notice”) for unpaid rent for February 2025 of \$1,500.00.
7. On February 7 and 24, 2025, the Representatives filed two *Form 2(B) Landlord Applications to Determine Dispute* with the Rental Office seeking rent owed and additional compensation of \$460.00, which is the subject of this decision (the “First and Second Landlord Applications.”) The First and Second Landlord Applications also seek vacant possession of the Unit and for the Sheriff to put the Landlord in possession.
8. On March 3, 2025, the Representatives filed a *Form 2(B) Landlord Application to Determine Dispute* with the Rental Office seeking additional compensation of \$2,793.88 (the “Third Landlord Application”) The Third Landlord Application also seeks vacant possession of the Rental Unit and for the Sheriff to put the Landlord in possession.
9. The three Landlord Applications outlined above are collectively the “Landlord Applications.”
10. On March 6, 2025, the Representatives and a Tenant, representing both Tenants, participated in the teleconference hearing with the Rental Office to determine the Landlord and Tenant Applications.

11. On March 12, 2025, the Rental Office issued Order LD25-093 which ordered the Tenants to vacate the Rental Unit due to unpaid rent and Order LD25-094 which ordered the Tenants to pay the Landlord \$3,913.35 by May 12, 2025 representing unpaid rent from January 1 to March 19, 2025. The Landlord's claim for inspection and cleaning of the mold was denied by the Rental Office and the Tenant's claim for \$25,000 in compensation to recover all rent paid, plus property damage, medical expenses, moving expenses and pain and suffering due to the presence of mold in the Rental Unit was also denied.
12. The Tenants appealed Order LD25-093 and Order LD25-094 on March 18, 2025.
13. The Commission heard the appeal on April 16, 2025, by way of telephone conference. The Tenants were represented by Alexander Poliakov ("Poliakov"), and the Landlord was represented by Ben Coles of Carr Stevenson and MacKay ("Counsel"). Inan Kucukkaya ("Kucukkaya"), the Landlord's property manager and Xiao "Vicki" Tong Liang ("Liang"), the Landlord's director, testified on behalf of the Landlord.
14. After the hearing and at the request of the Commission on April 20, 2025, the Tenants submitted supporting documentation related to their claim for damage to their furniture. Counsel on behalf of the Landlord submitted a response to the Tenants submissions on June 27, 2025.
15. The applicable legislation is the *Residential Tenancy Act*, cap. R-13.11 (the "Act").

C. DISPOSITION

16. The Commission allows the appeal in part, reducing the rent from \$1,500.00 to \$1,000.00 per month from the period January 1, 2025 to April 10, 2025 (pro-rated), for a total rent owed of \$3,333.33. The Commission awards the sum of \$749.00 to the Tenants for damaged furniture, and also awards the sum of \$750.00 for relocation costs, both of which awards are offset from the total rent owed. Accordingly, the Tenants owe the Landlord the sum of \$1,834.33.

D. ISSUES

17. (i) Are the Tenants obligated to pay rent from January 1, 2025 to April 10, 2025?

(ii) Are the Tenants entitled to any compensation as a result of the mold being found at the Rental Unit?

E. SUMMARY OF EVIDENCE

18. By way of background, the Landlords acquired the Rental Unit in the spring of 2024 and purchased the property "as is" given they planned to do some renovations in order to rent out the property as a short term rental. Tourism P.E.I. inspected and approved the property for this purpose issuing a Tourist Establishment License on June 10, 2024. It is noted that this inspection process would not provide a "testing" for mold. The Landlords rented out the property during the summer months and then decided to seek a long term tenant. The renovations included work on the roof and sealing off the access to the attic.

19. The parties entered into a written, fixed-term tenancy agreement for the Rental Unit from November 1, 2024, to October 30, 2025 with monthly rent of \$1,500 due at the first of the month. The Tenant also paid a \$1,500 security deposit.
20. Poliakov testified that although he and his wife took possession in early November 2024, they were in the process of moving from Ontario and did not actually begin living there until early December 2024. The Tenants started to feel unwell in December and their dog began to exhibit allergy like symptoms that required veterinarian advice. The Tenants also raised that they had been asking for the faucet that was leaking to be repaired since December. In January 2025, they identified black mold in the bedroom when they moved the bed for a routine cleaning. They reported the mold to the Landlord's representatives on January 13, 2025. When the Tenants reported the mold findings to the Landlord, the Landlord contacted Servpro to attend the Rental Unit for inspection. On January 15, 2025, Servpro attended the Rental Unit for inspection. The pictures submitted by Servpro demonstrate a black mold substance along the lower part of the wall and baseboard. Servpro found high humidity readings and that the walls were wet as confirmed by moisture meter readings. Baroscope inspections showed water stains from inside the wall cavity. Servpro recommended further work to be done including opening the wall cavity to determine the root cause of moisture; treating the stud wall and affected space with anti-microbial to inhibit future growth; supplement room with dehumidifier; and to repair the area.
21. The Landlord then arranged for Servpro to attend the Rental Unit to investigate further cleaning and remediation requirements on January 23, 2025. The Landlord provided notice to the Tenants on January 21 and 22 but the Tenants refused to let Servpro into the Rental Unit when they attended on January 23, 2025. The Tenants had contacted the provincial Department of Health and Wellness to request an inspection before Servpro did any more work. There was never a provincial inspection done. The Environmental Health Officer was aware that the Landlord was getting Servpro to do some testing and cleaning. The Tenants sealed off their bedroom where the mold was discovered and lived in the balance of the Rental Unit until they vacated the Rental Unit on April 10, 2025.
22. The Tenants did not pay rent from January until the date they vacated the Rental Unit. This resulted in the Landlord serving three eviction notices for the unpaid rent. The Rental Office ordered that the Tenants were to leave the premises on March 19, 2025 and that rent was due and owing to the Landlord pursuant to section 19(1) of the *Act*.
23. The Tenants moved out in April 2025 and reported feeling better at the hearing and have no continued symptoms. However, at the time of the hearing the Tenant reported that their dog still has symptoms. The Tenants were unable to move out before April as they have a dog and two cats and required extra time to find alternative housing.
24. Poliakov testified that the bed, mattress table and chairs were contaminated with mold and they left them behind in the Rental Unit. They have not yet replaced these items. They also claim for emotional distress, vet bills, specialty dog food and a dog collar to replace a contaminated one.

25. Counsel for the Landlord submitted that the Tenants moved out of the Rental Unit on April 10, 2025. The Landlord claims rent owed by the tenants. Order LD25-094 established the unpaid rent up to March 19, 2025. Counsel submitted that the unpaid rent, in the amount of \$5,000.00 needs to be paid given that the Tenants did not move out until April 10, 2025. Counsel further submitted that Tenant claims for harassment, personal injury etc. are not supported by the evidence and could not be claimed under the *Act*. Counsel acknowledged that there was mold and that the Landlord is required to address the mold and the Landlord took reasonable steps and had no prior knowledge of the mold. The Tenants viewed the Rental Unit on October 1, 2024 and did a walk through. There were no complaints regarding smell or mold at that time or during November or December 2024. Counsel submitted that the Landlord was invoiced \$460.00 for Servpro's attendance on the date the Tenants refused entry. The Landlord was only able to re-start work on mold remediation after the Tenants moved out on April 10, 2025. The Landlord's total claim against the Tenant is \$5,460.00 representing \$5,000.00 in rent plus the \$460.00 Servpro attendance fee.
26. Kucukkaya testified that he first became aware of the mold on January 13, 2025 when he received a text with pictures of mold. The next day he contacted Servpro. On January 15, 2025 Servpro did an inspection at the Rental Unit. Kucukkaya testified that January 2025 rent had still not been paid. He stated that Poliakov had told him the rent would be paid by January 16, 2025. No rent was forthcoming after that date so the Landlord served the First Notice on January 17, 2024. This was followed by a Second Notice being served on January 23, 2025 and a Third Notice being served on February 22, 2025.
27. The Commission notes that in the course of testimony, the parties referenced a partial telephone recording dated January 16, 2025 between Liang and Poliakov which formed part of the Record before the Commission. The Commission requested that the complete recording be filed following the hearing. Counsel undertook to file this recording. The Tenants were also given the opportunity to file a breakdown of the amount they were claiming for costs including: relocation, furniture and pet supplies.
28. A review of the telephone recording of January 16, 2025, which appears in its post-hearing iteration to be mostly complete, indicates that the Landlord expressed concern about the Tenants' health and released the Tenants from their obligations. Liang stated to Poliakov in the recording, "you can move out any time". Liang appeared to be genuinely concerned about the wellbeing of the Tenants. The Tenants also state that they could not immediately move out as it took some time to find a new home that would accept their pets. The next day the Tenants were served with the First Notice of Eviction.

F. ANALYSIS

29. The Tenants have appealed Rental Office Orders LD25-093 and LD25-094.
30. With respect to Order LD25-093, which requires the Tenants to vacate the Rental Unit, the Commission heard testimony that the Tenants did in fact vacate the Rental Unit several days prior to the hearing of their appeal. Accordingly, the Commission determines that the appeal of Order LD25-093 is moot. The appeal of Order LD25-094, which ordered the

Tenants to pay the Landlord the sum of \$3,913.35, and denied the Tenants' compensation claim remains before the Commission for determination.

31. The Commission notes that the Landlord has on appeal two claims against the Tenants: (1) \$5,000.00 for unpaid rent from January 1 to April 10, 2025; and, (2) \$460.00 for a remediation attendance fee when Servpro showed up and were refused entrance. The Commission denies the latter claim for \$460.00 for the same reasons as set out in Order LD25-094; see paragraphs [28] to [33] of that decision. In summary, given the facts of this case, three days' notice for remediation work requiring a family to vacate a rental unit for an unknown time period is unreasonable. Further, the Tenant was seeking support from the provincial authorities with an inspection to ensure the work proposed to be done was adequate. The Commission also notes in relation to the leaky faucet complaint of the Tenant that the Landlord made reasonable attempts to have it fixed but the Tenant would not allow entry to the contractor.
32. While the evidence supports a finding that the Landlord initially took prompt action to address the mold, the reality is the presence of the mold restricted the Tenants' use of the Rental Unit. The tenancy agreement contemplated \$1,500.00 per month for the full Rental Unit; however, the presence of mold restricted the use and enjoyment of the Rental Unit. One bedroom was completely off limits and unable to be used. Further, the presence of mold generally would cause concern and reduce the enjoyment of the Rental Unit as a whole. So while the Tenant was obligated to pay the rent at the beginning of the month, the Tenant no longer had safe exclusive possession of the entire Rental Unit. The Commission notes that on January 16, 2025, during the telephone call with the Tenant, the Landlord offered to release the Tenant from its lease obligation if the Tenants wanted to vacate earlier than the fixed term date. The Landlord expressed concern about the Tenants health but yet the next day the Tenants were served with a Form 4(A) Eviction notice. This was followed by two more eviction notices. By the time of the hearing, it was evident that the relationship between the parties had broken down and no trust remained.
33. As determined by the Rental Office, pursuant to s. 19(1) the Tenant is obligated to pay rent when it is due under the tenancy agreement. However, given the reduced access to the Rental Unit resulting in the Tenants no longer having exclusive possession to the entire Rental Unit, the Commission finds that it is appropriate to reduce the rent from \$1,500.00 per month to \$1,000.00 per month for the period January to April 10, 2025, reflecting the restricted use and enjoyment due to the presence of mold. When the 10 days pro-rated in April is included in the calculation (10/30 days' x \$1,000.00 = \$333.33), the Commission finds the total rent owing by the Tenants to the Landlord is \$3,333.33.
34. The Tenants make a claim for veterinary and other expenses for their dog, alleging that their dog's health was harmed by the presence of mold. While there are bills from the veterinarian in evidence, there is no report or note from the veterinarian linking the dog's health issues to mold. In addition, Poliakov testified that the Tenants felt better and had no more symptoms after they moved out of the Rental Unit several days prior to the appeal hearing. However, he also stated that their dog still has symptoms as of the appeal hearing date. The Commission rejects the claims of veterinary fees, special food and

other expenses for the family dog given the lack of a clear objective link between the mold and the dog's health.

35. The Tenants make a claim for relocation costs, including "moving expenses, deposits and temporary arrangements". In their email of April 20, 2025 at 2:04 p.m. they specify their claim as "1,500.00 – 2,600". The Servpro estimate of work provided by the Landlord would suggest at a bare minimum the Tenants would have to relocate to vacate the property for at least one full day/night while the work was getting completed. However, as noted above, the Tenant did not allow access for the remediation and ultimately decided to move out early. This move would be unexpected as the terms of the lease provided for an end date of October 30, 2025. The Commission finds that it would be reasonable to award \$750 for moving costs given all of the circumstances.
36. The Tenants also make a claim in the same email (dated April 20, 2025 2:04 p.m.) for a "King-sized bed & mattress, freezer, dining table, chairs: \$2,500.00 (bed frame \$799.00, mattress \$699.00, dining chairs \$125.00*4=\$500.00, dining table \$479.00)". The Tenants did not provide receipts or invoices for their itemized claim and provided no value for the freezer. These claimed personal property items total \$2,477.00. The Tenants did not indicate the age of the items for which they claimed were mold damaged, and therefore the Commission is unable to precisely calculate depreciation. The Landlords submitted pictures of these items that the Tenant left behind and there is no evidence of significant mold damage. However, the Commission accepts that it would be reasonable for the Tenants to claim a replacement of the bed frame and mattress that were directly exposed to the mold. and therefore the Commission awards \$1,498 depreciated at 50% for an amount of \$749, to also be offset against the revised rental arrears of \$3,333.33 previously calculated. The Commission denies the balance of the property damage claim. The Commission notes that as part of the post hearing submissions provided by Counsel to the Landlord, one page of a report by Steamatic PEI was included. This document is called an "Inspection Report" but there are no indications of its author and does not appear to be complete. As a result, the Commission is not prepared to give any weight to this document.
37. Accordingly, the Commission allows the appeal in part, varying the amount the Tenants must pay the Landlord as follows:

Rent Owning:	\$3,333.33
Minus Offsets	
Moving Expenses	(\$ 750.00)
Loss of bed frame and mattress (50%)	(\$ 749.00)
Total to be paid by the Tenants to the Landlord	<u>\$1,834.33</u>

38. The Commission notes that appeals under the Act to the Commission are appeals by way of re-hearing and tend to be determined in large measure by the unique facts of each case. Therefore, the use of this Commission Order as a precedent is accordingly limited

to very similar factual situations. In this matter the relationship between the parties quickly deteriorated when the Tenant was told by the Landlord they would be released from the rental obligations and then was served the next day with an eviction notice.

G. CONCLUSION

39. Order LD25-094 is varied, reducing the amount owed by the Tenants to the Landlord from \$3,913.35 to \$1,834.33.

IT IS ORDERED THAT

1. The appeal is allowed in part.
2. Order LD25-094 is varied.
3. The Tenants will pay the Landlord \$1,834.33 by July 31, 2025.

DATED at Charlottetown, Prince Edward Island, 10th day of July, 2025.

BY THE COMMISSION:

[sgd. Kerri Carpenter]

Kerri Carpenter, Vice Chair

[sgd. Pamela J. Williams, K.C.]

Pamela J. Williams, K.C., 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.