



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: July 31, 2025

Dockets: LR25024

Type: Rental Appeal

INDEXED AS: Monica MacKinnon v. Susan Younker

2025 PEIRAC 37 (CanLII)

Order No: LR25-36

BETWEEN:

Monica MacKinnon (the “Landlord”)

Appellant

AND:

Susan Younker (the “Tenant”)

Respondent

ORDER

Panel Members:

Gordon MacFarlane, Commissioner
Pamela J. Williams, K.C., Chair

Compared and Certified a True Copy

(Sgd.) Jessica Gillis

General Counsel

Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on June 24, 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 \$7,635.48 by June 9, 2025.

B. BACKGROUND

2. This appeal concerns a rental unit located at 140 Barbour Circle, Charlottetown, PEI (the “Rental Unit”). The Rental Unit is a two-bedroom and one-bathroom, single-family dwelling. On July 1, 2021, the parties entered into an oral, month-to-month tenancy agreement. Rent was \$1,100.00 due on the first day of the month. A security deposit was required but not paid.
3. On December 10, 2024, the Landlord served a *Form 4(A) Eviction Notice* (the “Notice”) to the Tenant for non-payment of rent and repeatedly late rent payments.
4. On December 30, 2024, the Tenant vacated the Unit due to the Notice.
5. On January 6, 2025, the Tenant filed an amended *Form 2(A) Tenant Application to Determine Dispute* (the “Tenant Application”) with the Rental Office seeking compensation for unlawful rent increases and failure to repair the Unit during the tenancy.
6. On January 15, 2025, the Landlord filed an amended *Form 2(B) Landlord Application to Determine Dispute* (the “Landlord Application”) with the Rental Office seeking rent owed and additional compensation for damage and furnace oil. The Tenant Application and the Landlord Application are collectively referred to as the “Applications.”
7. On January 24, 2025, the Rental Office emailed the parties notice of a teleconference hearing scheduled for February 25, 2025, along with a copy of the Applications. On February 13, 2025, the Rental Office made available to the parties a 146-page PDF and 1-video recording (the “Evidence Package”) through TitanFile.
8. On February 25, 2025, the Tenant, the Landlord and the Landlord’s witness (“LW1”) joined the teleconference hearing with the Rental Office. The parties confirmed they received the Evidence Package. The Tenant stated that one page was missing from her evidence, which was sent to the Rental Office and forwarded to the Landlord after the hearing. The Landlord submitted 5-pages of additional evidence after the hearing, which was forwarded to the Tenant.
9. On April 8, 2025, the Rental Office issued Order LD25-132 which ordered the Landlord must pay the Tenant \$7,635.48 by June 9, 2025.
10. The Landlord appealed Order LD25-132 on April 28, 2025.
11. The Commission appeal hearing was scheduled for Tuesday, June 24, 2025 at 10:30 a.m. using a telephone and video conferencing platform.
12. Several days before the hearing date, the Tenant sent an email to Commission staff. In that email, the Tenant noted that she was aware of the date, time and method of

participation for the hearing but advised Commission staff that she would not participate in the teleconference hearing.

13. The Commission heard the appeal on June 24, 2025, by way of telephone conference. The Landlord, Monica MacKinnon, attended the telephone hearing along with Blair Neil (Neil), Wendy Arbing (Arbing), and Cameron MacPhail (MacPhail) as witnesses. The Tenant was not present.
14. The applicable legislation is the *Residential Tenancy Act*, cap. R-13.11 (the “Act”).

C. DISPOSITION

15. The appeal is allowed in part. The Commission agrees with the return of rent award set out in Order LD25-132 for unlawful rental increases. The Commission awards partial damages to the Landlord to be offset against the return of rent claim awarded to the Tenant.

D. ISSUES

16. There are two issues before the Commission:
 - i) Did the Rental Office err in awarding a return of rent claim to the Tenant?
 - ii) Did the Rental Office err in not awarding claims for furnace oil and property damage to the Landlord?

E. SUMMARY OF EVIDENCE

17. The Landlord testified that in May 2021 she was looking to sell her home (the Rental Unit) and had agents lined up to facilitate a sale. The Landlord testified that the Tenant approached the Landlord asking if she would consider renting the home to her. The Landlord discussed this request with Neil and decided they could rent to the Tenant at \$2000 per month. The Landlord testified that the Tenant told her she could not afford that rent so they agreed to start the rent at \$1100 per month and increase it over time. The Landlord testified that she never told the Tenant that she could treat the Rental Unit as if it were her own home. The Landlord testified that the oil tank was filled in June 2021 but there was less than half a tank when the Tenant moved out. The Landlord served an eviction notice on the Tenant for non-payment of rent in December 2024. On December 30, 2024 the Landlord asked the Tenant if she had moved out and was informed by her that she had.
18. The Landlord also testified that in November 2024 she found pictures of the Rental Unit in an online marketplace where it was apparent that the Tenant was trying to find a roommate. The Landlord asked the Tenant to take down the marketplace posting.
19. The Tenant claimed that the Landlord failed to keep the property in good repair related to the heat pump, dryer and microwave. In response to these claims, the Landlord testified that a technician advised her that there was nothing wrong with the heat pump and stated that the problem with the dryer was a damaged latch that the Tenant’s original roommate had fixed. The Landlord testified that Neil had installed a new microwave in June 2021.

20. The Landlord testified that neither she nor Neil told the Tenant to put up the dog fence. The Landlord testified that the Tenant had raised the idea of the dog fence and was told that it was her choice.
21. The Landlord testified that the custom blinds came with the Rental Unit when she bought it and were in perfect condition but were chewed by the Tenant's dogs. Other parts of the Rental Unit were chewed such as baseboards and trim and putty and paint was used to try to hide this damage. The outside "corner-board" was damaged due to screws used to secure the dog fence and there was damage to the lawn from the fire pit. The Landlord further testified that one light fixture was replaced and did not match and one doorknob was replaced and did not match. The Landlord testified that paint cans were left but the paint in them had dried up so the walls could not be touched up.
22. The Landlord testified that she intended to use a written lease. At the start of the Tenancy, the Landlord had printed off a written lease and left it on the kitchen counter for the Tenant to sign. The Landlord stated that this was during the height of the COVID pandemic and therefore face to face contact was limited.
23. The Landlord testified that the Tenant had one older dog when she moved in. The Landlord stated she was not aware of the other three dogs.
24. Neil testified that he had checked the dryer and found that the latch was bent over as if someone was rough with the dryer door. He bent the latch back so it would work. He testified that he installed the new microwave a week before the Tenant moved in. He noted that the microwave had no cracks or damage when he installed it. He testified that he never suggested the dog fence. He stated that the dog fence used chicken wire and was unsightly. He stated that there was no need to dig up the yard and no rocks that needed to be leveled. He testified that on December 30, 2024, the furnace oil gage showed the tank was 1/3 full. He testified that he opened the paint cans and the paint had skimmed over and nothing usable was left. He testified that there was no pre-existing fire pit and when the Tenant moved out she had removed the tire rim she had used for a fire pit and the hole for the fire pit was not filled in. He stated that the Tenant had agreed to move the rent to \$2000 in a couple years.
25. Arbing testified that she lives close to the Rental Unit. She stated that the Tenant's dogs barked a lot and sometimes got loose. She testified that the flames with the fire pit got very high at times. She testified that there was no fire pit before the Tenant moved in.
26. MacPhail testified that the Tenant had three dogs after the first dog got sick. There was no fire pit before the Tenant moved in. The dogs were "terrors" and the Tenant took down the dog fence when she moved out. The yard condition was "terrible" from the dog fence.
27. While the Tenant did not participate in the hearing, the Commission notes that she filed written submissions (Exhibit R-1, page 220) and screenshots of text messages (Exhibits R-2 and R-3, pages 221 to 228).

F. ANALYSIS

28. The Commission accepts the oral evidence of the Landlord that the Landlord had originally intended that rent be \$2000.00 per month but agreed to a lower initial rent of \$1100.00

with the rent to be increased over time. This was the bargain the parties made prior to the start of the tenancy. However, while the parties had agreed to this arrangement, such an arrangement is contrary to the residential rental increase requirements in the Province of Prince Edward Island.

29. Simply put, Prince Edward Island has a legislative system of rent control for residential rental units that displaces any contract, oral or written agreement, 'bargaining' or 'deal-making' between a landlord and tenant. Freedom of contract does not apply with respect to residential rental increases in Prince Edward Island. Unlike some Canadian Provinces, this rent control runs with the unit rented. The parties cannot agree or consent to rent increases that are not allowed under legislation. The legislation is the law and the law demands residential rental increases to be in compliance with the process and procedure which must be followed to increase rent. Any rental increase that does not follow the legislation is illegal and the fact a tenant may have agreed to it is irrelevant.
30. For both the Act, which came into force on April 8, 2023 and the *Rental of Residential Property Act* (Former Act) which was previously in force: any rental increase requires compliance with the legislation as set out in the Act or the Former Act. In the Act, rental increases must comply with Part 3 of the Act, that is to say sections 47 to 50 inclusive. In the Former Act, rental increases must comply with Part IV of the Former Act, that is to say sections 20 to 23 inclusive.
31. There is no evidence before the Commission that the Landlord had served notice to the Tenant for an annual allowable increase, which would in any event had been a very minor increase. Likewise, there is no evidence before the Commission that the Landlord made an application to the Rental Office and received approval from the Rental Office for a rental increase greater than the annual allowable increase.
32. The Landlord testified that she purchased the Rental Unit as her personal home and lived there for a while. There is no evidence before the Commission that the Rental Unit was rented to any other tenants between the time the Landlord moved out and when the Tenant moved in. The \$1100.00 monthly rent initially charged by the Landlord set the rent for the Rental Unit under both the Former Act, which was in force at the start of the tenancy, and the Act, which came into force on April 8, 2023, which applied to the latter year and a half of the tenancy. Specifically, any increase in rent from July 1, 2021 to April 7, 2023 had to comply with Part IV of the Former Act. Any increase in rent from April 8, 2023 to December 30, 2024 had to comply with Part 3 of the Act.
33. A review of the evidence allows the Commission to find as follows:
 - From July 2021 to June 2022 the rent charged was \$1100.00 per month. This rent was legal.
 - From July 2022 to June 2023 the rent charged was \$1300.00 per month. The rental increase of \$200.00 per month was illegal.
 - From July 2023 to September 2024 the rent charged was \$1400.00. The total rental increase of \$300.00 per month was illegal.
 - From October 2024 to November 2024 the rent charged was \$2000.00. The total rental increase of \$900.00 per month was illegal.

34. Accordingly, the Commission agrees with the Rental Office that rent paid by the Tenant above \$1100.00 per month was illegally charged by the Landlord and must be re-paid to the Tenant. The Commission has reviewed and agrees with the sum calculated in Order LD25-132 of \$8,700.00.
35. The Landlord has claimed \$705.41 for furnace oil. The Landlord did top up the oil tank on June 25, 2021 shortly before the July 1, 2021 start of the tenancy, and topped up the tank 11 days after the end of the tenancy on January 10, 2025; see both receipts in Exhibit E-32 pages 155-156 of the Commission file record. The Commission disregards any difference in furnace oil level between June 25 and July 1 as heating fuel consumption at in early summer would be negligible. However, given that the Rental Unit was heated for 11 days in winter between the end of the tenancy (December 30) and the post tenancy top up (January 10), and given that the available evidence does not facilitate a precise calculation of daily fuel consumption, the Commission discounts the Landlord's claim for furnace oil to \$650.00.
36. The Commission agrees with the Rental Office that the Landlord has a valid pro-rated (30 out of 31 days x \$1100.00) claim for rent for the month of December 2024 in the amount of \$1,064.52.
37. The evidence does indicate that the Tenant took liberties with the Rental Unit without seeking appropriate permission from the Landlord. The Tenant put up a chicken wire fence in the backyard; dug a firepit; did not prevent her dogs from damaging the blinds and baseboard; painted rooms in the house and certainly appeared to treat the Rental Unit as her own property at times as opposed to a rental.
38. The Landlord has filed claims for property damage and provided quotes for replacement and repair (see pages 154 and 157 of the Commission file record). The Commission generally follows the principle of betterment when a damaged item is replaced by a new one; for a detailed discussion see Orders LR25-25 and LR24-06. In brief: the principle of betterment applies so that a party should not be put in a better position than they would have had the particular wrongdoing not occurred. The Commission has no specific evidence as to age of the Rental Unit, the date of any previous renovations, or the date of purchase of the window blinds, for example. In the absence of such specific evidence, the Commission awards a discount of 40% for the following:
- Blinds (page 157) \$1,506.52 minus 40% = \$903.91
 - Drywall and paint (page 154) \$1,600.00 minus 40% = \$960.00
 - Corner board replacement (page 154) \$800.00 minus 40% = \$480.00
 - Landscaping for back yard (page 154) \$1,600.00 minus 40% = \$960.00
 - Replacement of baseboard (page 154) \$1,250.00 minus 40% = \$750.00
- Total property damage award after betterment discount = \$4,053.91
39. The Commission declines to award an amount for the Landlord's other damage claims on the basis of normal wear and tear for a tenancy of over three years. The Commission also declines claims for a non-matching light fixture and a non-matching doorknob.

40. The Commission calculates the total award to the Landlord as follows:

- Property damage award after 40% betterment discount = \$4,053.91
- Pro-rated (30/31 days) rent for December 2024 = \$1,064.52
- Furnace oil – discounted for 11 days' use = \$650.00

Total award to Landlord: \$5,768.43

41. To summarize: the Landlord owes the Tenant the sum of \$8,700.00 for illegal increases in rent. The Tenant owes the Landlord the sum of \$5,768.43 for damage to the Rental Unit. These figures are offset by the Commission, with the result that the Commission finds that the Landlord owes the Tenant the sum of \$2,931.57.

G. CONCLUSION

42. The Landlord's appeal is successful in part. As explained in the Commission's Order, the amount owed by the Landlord to the Tenant has been reduced on appeal from \$7,635.48 to \$2,931.57.

IT IS ORDERED THAT

1. The appeal is allowed in part.
2. Order LD25-132 is varied with respect to allowing partial furnace oil and property damage claims to the Landlord which thus lowers the amount owing by the Landlord to the Tenant.
3. The Landlord shall pay the Tenant the sum of \$2,931.57 within 30 days of this Order.
4. The monthly rent for 140 Barbour Circle, Charlottetown, PEI is \$1100.00 per month. This rent is fixed and can only be increased by following the process set out in Part 3 of the Residential Tenancy Act.

DATED at Charlottetown, Prince Edward Island, 31st day of July, 2025.

BY THE COMMISSION:

[sgd. Gordon MacFarlane]
Gordon MacFarlane, Commissioner

[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.