



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: September 2, 2025

Dockets: LR25032

Type: Rental Appeal

INDEXED AS: Harcor Holdings Inc. v. Kent Rafters

2025 PEIRAC 40 (CanLII)

Order No: LR25-37

BETWEEN:

Harcor Holdings Inc. (the "Landlord")

Appellant

AND:

Kent Rafters (the "Tenant")

Respondent

ORDER

Panel Members:

Pamela J. Williams, K.C., Chair
Gordon MacFarlane, 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 June 25, 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 \$1,019.16 by June 16, 2025.

B. BACKGROUND

2. This appeal concerns a rental unit located at 25334 Rte 2, Apt. 34, New Annan, PEI (the "Rental Unit"). The Unit is a one-bedroom and one-bathroom apartment in a 17-unit building, owned by the Landlord.
3. On October 1, 2023, the parties entered into a written, fixed-term tenancy agreement for the period of October 1, 2023 to September 30, 2024. At the end of the fixed-term the tenancy continued on a monthly basis. Rent was \$825.00 due on the first day of the month. A \$500.00 security deposit was paid at the start of the tenancy.
4. On February 23, 2025, the Tenant gave the Landlord's representative notice that he was vacating the Rental Unit at the end of February.
5. The Tenant vacated the Rental Unit by February 27, 2025.
6. On March 24, 2025, the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* ("Application") with the Rental Office seeking the return of the security deposit.
7. The parties participated in a teleconference hearing before the Rental Office on May 15, 2025. The following day, on May 16, 2025, the Rental Office issued Order LD25-173, which ordered that the Landlord must repay the Tenant double the security deposit, pursuant to subsection 40(4) of the *Residential Tenancy Act*, for a total of \$1,019.16.
8. The Landlord appealed Order LD25-173 on June 2, 2025.
9. The Commission heard the appeal on June 25, 2025, by way of telephone conference. The Landlord representative, Gordon Rogerson (the "Representative"), attended the hearing. The Tenant, Kent Rafters, also attended the hearing.

C. DISPOSITION

10. The appeal is allowed in part. The Commission varies Order LD25-173 and finds that the Landlord must return the \$500 security deposit to the Tenant, plus interest in the amount of \$22.79.¹

D. ISSUES

11. There are two issues in this appeal. The first is whether the Landlord is subject to the requirement to repay the Tenant double the security deposit per subsection 40(4) of the *Residential Tenancy Act*.

¹ Calculated from October 1, 2023, to the date of this order.

12. In the event the answer to the first issue is 'no', the second issue is whether the Landlord is entitled to keep the Tenant's security deposit for unpaid rent.

E. SUMMARY OF EVIDENCE

13. At the hearing before the Commission, the Representative submitted his position that because the Tenant only gave a few days' notice that he would be moving out, the Landlord should be entitled to keep the \$500 security deposit for unpaid rent. The Representative also referred to a text message exchange (in evidence before the Commission) between himself and the Tenant where the Tenant acknowledged that he would lose his security deposit.
14. The Representative testified that he was able to find someone to move into the Rental Unit for March, and confirmed that the new tenant paid full rent for the month of March.
15. The Tenant testified that at the time he gave notice that he would be moving out of the Rental Unit, he understood the Landlord would have to keep his security deposit for March's rent because it might be hard to find a new tenant on such short notice. However, the Tenant testified that a few days later he learned someone else had moved into the Rental Unit. The Tenant further testified that there was no damage to the Rental Unit and it was clean when he moved out.

F. ANALYSIS

Issue 1 – Must the Landlord repay double the security deposit?

16. The Landlord's Notice of Appeal states the following, in part, as his reasons for appealing Order LD25-173:

This tenant was fully aware we intended to retain his security deposit by way of that message between myself and the tenant.

17. Order LD25-173 found that the Landlord did not return the security deposit to the Tenant, nor did they file an application with the Director to retain the deposit, as required by subsection 40(1) of the *Residential Tenancy Act*. The Order also finds that "there was no written agreement permitting the Landlord to keep the security deposit." For those reasons, the Residential Tenancy Officer found that the Landlord was required to return the deposit to the Tenant with interest, and compensate the Tenant double the security deposit pursuant to subsection 40(4) of the *Act*.
18. On the Commission's review of the evidence before us, we come to a different finding.
19. Subsections 40(1), (3) and (4) of the *Act* read:

40. Return of security deposit

- (1) Except as provided in subsection (2) or (3), within 15 days after the date the tenancy ends or is assigned, the landlord shall either

- (a) issue payment, as provided in subsection (5), of any security deposit to the tenant with interest calculated in accordance with the regulations; or
- (b) make an application to the Director under section 75 claiming against the security deposit.

[...]

Retention by landlord, other circumstances

- (3) A landlord may retain an amount from a security deposit if
 - (a) at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or
 - (b) after the end of the tenancy, the Director orders that the landlord may retain the amount.

Consequences of non-compliance

- (4) Where a landlord does not comply with this section, the landlord
 - (a) shall not make a claim against the security deposit; and
 - (b) shall pay the tenant double the amount of the security deposit.

20. Subsection 40(1) provides two specific exceptions to the requirement that a landlord either return a security deposit or make application to the Director within 15 days of the end of the tenancy. In this case, the Commission is of the opinion that the exception found at clause 40(3)(a) applies, such that the Landlord was not required to comply with subsection 40(1).

21. The evidence before the Commission includes a screenshot of a text exchange between the Tenant and the Landlord dated Sunday, February 23rd at 2:57 p.m. The text exchange reads:

Tenant: *Hey Gord just letting you know that I need to move out by the end of the month. I guess I will have to lose my damage deposit.*

Representative: *Ok Kent still have no one interested as hard to find good people in 10 days as I am sure you know*

Tenant: *I understand bud*

22. In the Commission's opinion, this exchange constitutes an agreement by the Tenant, in writing, that the Landlord may retain the security deposit to pay a liability or obligation of the Tenant. In this case, that liability or obligation was rent for March 2025, because the Tenant had not given the required notice that he would be vacating the Rental Unit. The Tenant stated that he would likely have to lose his deposit and replied "I understand" when the Landlord said it was hard to find a new tenant on short notice.

23. The Commission, therefore, finds that at the end of the tenancy, clause 40(3)(a) applied to except the Landlord from having to either return the security deposit or make application to the Director to retain it for unpaid rent. For this reason, we find that the Landlord was not subject to the consequences of non-compliance found at subsection 40(4) and is not required to pay the Tenant double the amount of the security deposit.

Issue 2 – Is the Landlord entitled to keep the Tenant’s security deposit?

24. The Tenant’s *Form 2(A) Tenant Application to Determine Dispute* sought a return of the security deposit, stating:

... I told the Landlord I would be moving out the end of Feb. I only gave him 10 days or so. I was only on a month to month. He told me I would lose my security deposit because it would be hard to get someone in there. I found out someone moved in there right away. I then asked if I could have it my [\$]500 back now that there is someone in there and he told me that they were only going to be there for 2 week[s]. I went to look and they are still in there. All I want is my [\$]500 security [deposit] back.

25. The Representative’s position in response is that because the Tenant did not give the required 30-days’ notice in accordance with the *Residential Tenancy Act*, the Landlord was entitled to keep the security deposit for rent for March 2025. He said the Tenant’s requirement to give notice does not change just because he was able to find someone to move into the Rental Unit.
26. In the circumstances of this case, the Commission finds that the Landlord is not entitled to keep the Tenant’s security deposit for unpaid rent because the Landlord was able to successfully mitigate his losses by moving a new tenant into the Rental Unit right away.
27. The *Act* defines “security deposit” as meaning money paid on behalf of a tenant as security for the performance of an obligation or the payment of a liability of the tenant respecting the rental unit.² The Commission is satisfied that the payment of rent is an obligation of a tenant respecting a rental unit.³ However, at section 46, the *Act* also requires a landlord to mitigate the damages that may be caused where a tenant abandons a rental unit.
28. In this case, we are satisfied that the Landlord successfully mitigated their possible losses by renting the Rental Unit to a new tenant. The Representative testified that the new tenant paid full rent for the month of March 2025. We also note that the tenancy was month-to-month and there was no evidence before the Commission that the Landlord incurred any costs to find a new tenant as a result of the Tenant’s late notice. Therefore, we are not satisfied that the Landlord is entitled to retain the Tenant’s security deposit as payment for March 2025 rent.

² 1(q) “**security deposit**” means money or any property paid by or on behalf of a tenant to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant respecting the rental unit;

³ See, for example, subsection 19(1) of the *Act*, requiring a tenant to pay rent when due.

G. CONCLUSION

29. The Commission finds that the Tenant agreed in writing that the Landlord may retain the security deposit as payment March 2025 rent, and therefore, the Landlord is not subject to the consequences of non-compliance found at subsection 40(4) and is not required to pay the Tenant double the amount of the security deposit
30. The Commission also finds that the Landlord mitigated any potential losses that resulted from the Tenant's lack of proper notice by promptly moving someone into the Rental Unit, and received full rent payment for March 2025. For this reason, we conclude that the Landlord must return the Tenant's \$500 security deposit, plus interest to the date of this Order in the amount of \$22.79.

IT IS ORDERED THAT

1. The appeal is allowed, in part. Order LD25-173 is varied.
2. The Landlord must pay to the Tenant \$522.79 within 15 days of the date of this Order.

DATED at Charlottetown, Prince Edward Island, 2nd day of September, 2025.

BY THE COMMISSION:

[sgd. Pamela J. Williams]

Pamela J. Williams, K.C., Chair

[sgd. Gordon MacFarlane]

Gordon MacFarlane, 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.