



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: January 30, 2026

Dockets: LR25059

Type: Rental Appeal

INDEXED AS: Sara Kelly v Hilary Wood and Anthony McLennon

2026 PEIRAC 2 (CanLII)

Order No: LR26-02

BETWEEN:

Sara Kelly (the "Landlord")

Appellants

AND:

Hilary Wood and Anthony McLennon (the "Tenants")

Respondents

ORDER

Panel Members:

Gordon MacFarlane, Commissioner
Kerri Carpenter, Vice 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 December 10, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord must pay the Tenants \$2,710.8 by December 8, 2025.

B. BACKGROUND

2. This appeal concerns a rental unit located at Apartment 1, 181 Weymouth Street, Charlottetown, PEI (the “Rental Unit”). The Rental Unit is a two-bedroom, one-bathroom rental unit located in a duplex that the Landlord has owned for over nine years.
3. The Landlord and the Tenants entered into a written, fixed-term tenancy agreement from November 1, 2022 to October 31, 2023 (the “Tenancy Agreement”). The agreement then continued on a month-to-month basis. A security deposit of \$1,600.00 was paid on October 6, 2022. Rent in the amount of \$1,600.00 was due on the first day of the month.
4. On May 15, 2025 the Tenants text-messaged the Landlord stating that the Tenants would move out of the Rental Unit on June 15, 2025.
5. On June 15, 2025 the Tenants moved out of the Rental Unit and on June 16, 2025 the Tenants returned the Rental Unit’s keys.
6. On July 17, 2025 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the “Tenant Application”) with the Rental Office seeking the return of the security deposit.
7. On September 17, 2025 the Rental Office sent the parties notice of a teleconference hearing scheduled for October 30, 2025.
8. On October 21, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the “Landlord Application”) with the Rental Office seeking to keep the Tenants’ security deposit and additional compensation.
9. On October 30, 2025 the Tenants and the Landlord participated in a teleconference hearing before the Rental Office. The parties confirmed that they received the evidence package and the additional evidence. The parties confirmed that all evidence submitted to the Rental Office was included.
10. On November 7, 2025, the Rental Office issued Order LD25-397, which ordered that the Landlord pay the Tenants \$2,710.8 by December 8, 2025.
11. The Landlord appealed Order LD25-397 on November 17, 2025.
12. The Commission heard the appeal on December 10, 2025, by way of telephone conference. The Landlord and the Tenants attended the tele-hearing.
13. The applicable legislation is the *Residential Tenancy Act*, cap. R-13.11 (the “Act”).

C. DISPOSITION

14. The appeal is allowed in part, varying Order LD25-397 by awarding the Landlord a claim for painting which is to be offset against the money owed by the Landlord to the Tenants. The amount of interest accrued on the original security deposit is also updated.

D. ISSUES

15. ISSUE A – When did the tenancy end?

ISSUE B – Do the double security deposit provisions of section 40 of the *Act* apply in this matter?

ISSUE C – Has the Landlord established a compensation claim in addition to the kitchen countertop claim awarded in Order LD25-397?

E. SUMMARY OF EVIDENCE

Landlord's Evidence

16. The Landlord referred to her written submissions found at Exhibit A-10 (pages 75 to 99 of the Commission file record). As a background, she noted that she is a small operation landlord. She purchased the building that contains the Rental Unit about 10 years ago. The Rental Unit was renovated in 2020. Her first tenants post renovation lived there approximately two years, followed by the Tenants who lived there not quite two years.
17. The Landlord testified that when the Tenants first moved into the Rental Unit there was only one issue: some curling of the flooring which was likely an installation or leveling issue. In June 2025 the Tenants only paid one half of the month's rent and the Landlord had expected them to pay the full month although they moved out the middle of that month. The Tenants did not request a return of the security deposit until July 4, 2025. The Landlord questioned why the Tenants waited so long after the end of the Tenancy to request the return of their deposit.
18. The Landlord testified that the walls were damaged beyond the level of repairs she could perform herself. The Landlord stated that she had to hire a professional painter. The Landlord noted the following issues with the Rental Unit: stickers on walls, damage to cupboards from child proof locks, damaged window screens, water in the basement from the upstairs toilet, damage to drywall, mildew, and items such as toys and gift bags put in the compost bin. The Landlord stated that she was under the impression that the Tenants were not expecting the security deposit to be returned.
19. The Landlord stated that she had a good landlord-tenant relationship with the Tenants during the tenancy. The Landlord stated that some of the repairs have not yet been done and she hopes to complete the repairs in the spring.
20. The Landlord stated that she feels she is a reasonable person and could have worked something out with the tenants but they went right to the rental office.

21. The Landlord acknowledged that the photograph on page 75, which shows flooring, was not a picture of the Rental Unit floor but rather a Google image of a curling floor.
22. The Landlord acknowledged that the photographs she submitted of the Rental Unit were most likely taken about a month before the Tenants moved into the unit, when previous tenants were still living in the Rental Unit.
23. The Landlord acknowledged the Rental Unit was very similar to the upstairs unit and therefore some of the pictures might be of the upstairs unit rather than the Rental Unit. She stated that her acceptance of the \$800 e-transfer in June was not a waiver and she was under the impression that she was keeping the security deposit.

Tenants' Evidence

24. The Tenant Hilary Wood (Wood) stated that she did not present pictures of the floor as she did not know that it would be raised as an issue. Wood stated that the Tenants had no idea there was a leak from the toilet into the basement. Wood stated that if they had been aware they would have told the Landlord. Wood testified that she had hired cleaners to clean the kitchen and the bathroom stating that if she didn't care she would not have paid for cleaning to be done. Wood pointed to two pages in evidence showing the Rental Unit while the Tenants were living there and testified that certain photos submitted by the Landlord were, in fact, photos of the upstairs rental unit and did not show the condition of the Tenants' Rental Unit.
25. In response to a question from the Landlord, Wood stated that she left the Rental Unit in a condition she would be comfortable moving into.
26. Wood stated that she was shocked that the Landlord was making damage claims and trying to keep the security deposit so she contacted the rental office to check into her rights as a tenant. When asked by the Landlord why Wood only sent one half month's rent for June 2025, Wood stated that the Landlord had accepted the e-transfer for that amount.
27. When questioned by the Commission about holes in the drywall for shelving and furniture units, Wood stated that the Tenants had purchased drywall filler and filled and sanded the holes but did not paint. Wood acknowledged that the filled screw holes were a bit lighter in colour than the wall colour. Wood stated that she had no knowledge of any damage done to the sink cupboard door from the childproof locks. Wood also testified that they never damaged the screens.

F. ANALYSIS

ISSUE A – When did the tenancy end?

28. The Commission agrees with the finding made in Order LD25-397 that the tenancy ended on June 15, 2025 for the same reasons as found by the Residential Tenancy Officer (the Officer).
29. While normally a termination notice served on May 15, 2025 would end a tenancy on June 30, 2025 given all of the requirements of subsection 55(2) of the *Act*, a landlord is permitted to waive their rights under the *Act*. Section 5 of the *Act* protects tenants against

waivers but there is no corresponding protection for landlords against waivers. Having reviewed the May 15 and 16, 2025 text message exchanges between the parties, the Commission is satisfied that the Landlord waived the right to receive anything more than one month's notice. After time to reflect, the Landlord made clear her position in a July 4, 2025 email to the Tenants, which states in part:

"... I didn't say anything at the time but 1 month's notice should be made from the 1st of the month as you can't rent an apartment in the middle of the month. I didn't push that as I knew I needed time to do the floor so I accepted half months rent. Its been a very big scramble for me to get the place back to rentable status for the new tenants coming in. There also didn't appear to be adequate cleaning done."

30. Accordingly, the Commission finds that the Landlord waived the strict notice requirements and the tenancy agreement ended on June 15, 2025.

ISSUE B – Do the double security deposit provisions of section 40 of the Act apply in this matter?

31. The *Act*, including section 40, requires that a tenant's security deposit is to be returned (with interest) within fifteen (15) days of the end of a tenancy, unless one of the exceptions in the *Act* applies, or the Landlord files an application to retain the security deposit. Therefore, a landlord may only retain all or a portion of the security deposit if the landlord is authorized to do so under section 40 of the *Act*. Landlords in Prince Edward Island should familiarize themselves with the requirements of section 40 to avoid exposure to the potential penalty of being required to pay a tenant double the security deposit.
32. In the present appeal, the Landlord retained the security deposit. She should have never presumed she was able to retain it. If the Landlord wished to retain the security deposit, the onus was on her to study the requirements of section 40 and meet those requirements within the stated time period. The Landlord did not do this and there is no relief that the Commission can provide for her failure to follow the requirements of the *Act*. The Commission must enforce Subsection 40(4) which states:

(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.

33. Accordingly, the double security deposit provisions do apply given the facts of this appeal.

ISSUE C – Has the Landlord established a compensation claim in addition to the kitchen countertop claim awarded in Order LD25-397?

34. In Order LD25-397, the Officer awarded a \$300.00 deduction as compensation for damage to the kitchen countertop. Neither the Tenants nor the Landlord disputed this finding in their oral arguments before the Commission. The Commission finds that this award was reasonable and the Officer has fully set out his rationale for this award. Accordingly, the Commission confirms compensation for the damaged countertop in the form of a \$300.00 deduction from the sum the Landlord must pay to the Tenants.

35. The Landlord seeks additional compensation for alleged damage to the Rental Unit, primarily regarding damage to the walls and other items listed in paragraph 18 above. The Landlord's evidence for this claim, however, has some significant issues given the Landlord's failure to provide accurate, unit specific, clearly dated photographs of the Rental Unit immediately prior to the start of the tenancy. During the hearing, it became apparent that some of the photographs submitted by the Landlord to establish pre-tenancy condition were of the other unit in the building. She also did not submit any photographs of the condition of the premises at the end of the Tenancy. Accordingly, the Commission finds that the Landlord has submitted insufficient evidence to establish a claim for damage to the walls. However, with respect to the alleged damage to the walls, photographs submitted by the Tenants are helpful in that they show several tall pieces of furniture shelves affixed to the walls. Wood acknowledged in oral testimony that the various pieces of furniture and wall units were attached (by the Tenants) to the walls, without having obtained permission from the Landlord to do so. Accordingly, the Commission accepts the Landlord's evidence of damage such as larger screw holes to the walls, which necessitated repair and painting. Wood testified that the Tenants tried to fill the holes with a drywall compound and then sanded but did not paint.

36. The Landlord testified to having engaged a painter to repair and paint the walls. On page 81 of the Commission file record (part of Exhibit A-10), there is a June 30, 2025 7:55 a.m. text message from the Landlord's painter to the Landlord:

Morning sara, I know I said 950 plus the cost of paint. But with extra coat of paint cause change of color. Was just going to charge an extra 300. So it would be \$1200 plus 210 for paint. Which the bill would be 1,410.

37. The Commission finds that the Tenants have caused damage to the walls that exceeded normal wear and tear. The text message from the painter suggests that the cost of repainting in the same colour that was on the walls during the tenancy would be \$950.00 plus the cost of paint (\$210). The painter suggests a colour change, presumably requested by the Landlord and not necessary to restore the walls, would cost an extra \$300.

38. Given the evidence of the Landlord that the Rental Unit was renovated in 2020, that there was a two year (approximate) tenancy predating the Tenants' tenancy, and that the Landlord has not accurately and definitively establish the condition of the Rental Unit immediately prior to the Tenants moving in to the Rental Unit, the Commission finds that a 50% apportionment of the necessary painting cost, but not including the extra \$300 for the change in colour, is reasonable. We calculate this to be \$580.00 ($\$950 + \$210 = \$1,160 / 2 = \580).

39. Accordingly, the Commission allows the appeal in part and awards a deduction of \$580.00 from the amount the Landlord owes the tenants, in addition to the \$300.00 countertop deduction previously awarded.

40. The Commission finds that there is insufficient evidence to support the Landlord's claims regarding alleged damages to the tiles in the shower, damage to screens, water in basement caused by a leak in the bathroom upstairs, and damage to a cabinet door due to child proofing mechanism.

G. CONCLUSION

41. The appeal is allowed in part. The Commission confirms the award to the Tenants of double the security deposit, interest on the security deposit, and the damage to the countertop. The Commission also orders the sum of \$580 to the Landlord regarding painting that was required as a result of damage caused by the Tenants to the walls of the Rental Unit. The Landlord must pay the Tenants the sum of \$2,462.04, as particularized below:

Security Deposit	\$1,600.00
Interest on Security Deposit from October 6, 2022 to date of Order	\$142.04
Double Security Deposit	\$1,600.00
Less:	
Painting	(\$580.00)
Countertop	(\$300.00)
Landlord to pay Tenants	\$2,462.04

IT IS ORDERED THAT

1. The appeal is allowed in part.
2. The tenancy between the parties ended on June 15, 2025.
3. Section 40 of the Act applies, and the evidence establishes that the Landlord must pay the Tenants double the security deposit.
4. The total amount the Landlord must pay to the Tenants is \$2,462.04, within 15 days from the date of this Order.

DATED at Charlottetown, Prince Edward Island, 30th day of January, 2026.

BY THE COMMISSION:

[sgd. Gordon MacFarlane]

Gordon MacFarlane, Commissioner

[sgd. Kerri Carpenter]

Kerri Carpenter, Vice 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.