

Introduction

- [1] On April 24, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking the following remedies:

To request a determination that my landlord contravened my right to quiet enjoyment, entered the rental unit unlawfully, prohibited and/or restricted access to the rental unit, changed the locks or failed to secure the rental unit, failed to repair or maintain the rental unit, or any other material term of the tenancy agreement; and

I am a former tenant and request compensation from my former landlord for a bad faith eviction.

- [2] The Tenant served the Landlord with the Application.
- [3] On July 7, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and a representative of the Landlord participated.

Issue to be Decided

- i. Did the Landlord contravene the Tenant's rights?
- ii. Is the Tenant entitled to compensation for a bad faith eviction?

Summary of the Evidence

- [4] In May 2022 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. Rent was \$2,000.00 due on the first day of the month. A security deposit of \$2,000.00 was required and paid.

Tenant's Evidence and Submissions

- [5] The Tenant testified that she is seeking \$8,000.00 in return of rent from December 2022 to March 2023. The Tenant stated that the Residential Property had a very bad mold issue. The Tenant stated that she informed the Landlord in December 2023 and a real estate agent showed up to the Residential Property to inspect. The Tenant stated that she was told to leave the Residential Property, however, she never received an eviction notice.
- [6] The Tenant stated that she vacated the Residential Property on March 31, 2023. The Tenant stated that she continued to live in the Residential Property as she was unable to find a new place to live right away. The Tenant stated that many of her personal belongings were damaged because of the mold. The Tenant submitted numerous photographs into evidence of the mold, the damage to her personal property and text message conversations.

Landlord's Evidence and Submissions

- [7] The Landlord's representative testified that the Residential Property is a new build, built in January 2022. The representative stated that the mold was a result of an issue with the build and contacted the builders about it. The representative stated that they inspected the Residential Property and attempted to remedy it. The representative stated that once it was determined that the mold issue could not be resolved and that the builders were delayed in being unable to do any renovations, the representative offered to assist the Tenant in moving. The representative stated that they never served an eviction notice on the Tenant, but informed her that she should look for a new place to live. The representative stated that they offered to pay for a hotel or Air B&B.

- [8] The representative stated that the Residential Property is unlivable and remains vacant. The representative stated that until the builders can become available they cannot rent the Residential Property. The earliest estimate provided to the Landlord by the builders was December 2024. The representative stated that they returned the Tenant's security deposit and paid \$500.00 for moving expenses.

Analysis

- [9] The first issue: *Did the Landlord contravene the Tenant's rights?* The Officer notes that subsection 28.(1) of the Act states:

Obligation to repair and maintain

A landlord shall provide and maintain the residential property in a state of repair that

- (a) complies with the health, safety and housing standards required by law; and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

- [10] The Officer finds that after reviewing the evidence in its totality, and considering the testimony of the parties that the Landlord has not contravened subsection 28.(1) of the Act. The Officer finds that the Landlord took the appropriate steps to investigate the issue and attempted to remedy it. The Officer notes that the evidence suggests that the Landlords were unable to get the mold issue resolved in a timely manner they offered assistance and accommodations to the Tenant, which the Tenant did not choose to accept. The Tenant continued to reside in the Residential Property until she found accommodations of her choosing.

- [11] The Officer notes that further delays were the result of the professional builders. The Officer notes that the Island Regulatory and Appeals Commission in Order LR23-30 commented this:

"The Commission finds that while some issues were attended to quite promptly, resolution of other issues were delayed due to a combination of factors – such as availability of skilled tradespeople and necessary cancellations. These types of problems in getting repair work done are, unfortunately, common in the province. It is common knowledge that there is a shortage of skilled tradespersons available to do work resulting in delays..."

- [12] The second issue: *Is the Tenant entitled to compensation for a bad faith eviction?* The Officer notes that subsection 65.(1) of the Act states:

Notice given in bad faith

A former tenant may make an application to the Director under section 75 to determine whether a landlord gave a notice of termination under sections 62, 63 or 64 in bad faith.

- [13] The Officer finds that based on the testimony of the parties that a notice of termination (an eviction notice) was never served on the Tenant. Therefore, the Officer finds that the Tenant cannot seek a remedy under subsection 65.(1) of the Act. Therefore, the Application is denied.

Conclusion

- [14] The Application is denied.

IT IS THEREFORE ORDERED THAT

A. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 26th day of July, 2023.

(sgd.) Cody Burke
Cody Burke
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within **20** days of this Order. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.