

Introduction

- [1] On June 7, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking a determination that the Landlord contravene the *Act*, an adjustment in rent, and return of rent. The Officer notes that the Tenant amended the Application to request 3 months' worth of rent be returned.
- [2] On June 14, 2023 the Tenant filed another Tenant Application to Determine Dispute (Form 2A) with the Rental Office to dispute a Notice of Termination (the "Second Application"). Attached to the Second Application was a Notice of Termination (Form 4B) dated June 12, 2023 effective July 12, 2023 (the "Notice"). The reason for the Notice was for renovations and/or repairs pursuant to subsection 64.(1)(c) of the *Act*.
- [3] The relevant documents were properly served on the parties.
- [4] On July 13, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and a representative of the Landlord participated.

Preliminary Issue to be Decided

- i. Is the Notice valid?

Preliminary Matter & Decision

- [5] Upon reviewing the evidence package, the Officer noted that the Notice was for renovations and/or repairs, yet there was no Landlord Application for Approval for Renovations and Repairs (Form 6) and there was no written approval from the Rental Office as it relates to the Residential Property in the evidence.
- [6] At the beginning of the hearing, the Officer through examination asked the Landlord's representative questions as it relates to the Notice and if the Landlord applied to the Rental Office for approval to serve the Notice. **The Officer notes that a landlord is required to apply to the Rental Office through a Form 6 application before the landlord may serve a tenant with a Notice of Termination for renovation and/or repairs.**
- [7] Subsection 64.(2) of the *Act* states:

Director's approval required

Before giving notice for the purpose of clause (1)(c), the landlord shall apply to the Director in accordance with the regulations, providing the information specified by the regulations, and request the Director's approval to provide the notice to the tenant.

- [8] The Officer finds that based on the evidence submitted and the testimony of the Landlord's representative that the Landlord did not apply and did not have approval from the Rental Office before serving the Tenant with the Notice. Therefore, the Officer finds that the Landlord did not comply with subsection 64.(2) of the *Act*. As a result, the Second Application is allowed and the Notice is invalid. The tenancy agreement shall continue in full force and effect.

Issue to be Decided

- ii. Is the Tenant entitled to a return of rent?

Summary of the Evidence

- [9] On May 20, 2021 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property. The Residential Property is situated in 3-unit building (the "Building"). The fixed term was renewed, however, has since converted to a month-to-month agreement. Rent is \$1,150.00 due on the 7th day of the month. A security deposit of \$1,000.00 was required and paid.

Tenant's Evidence and Submissions

- [10] The Tenant testified that she is seeking \$3,450.00 in return of rent. This represents a return of rent for the months of May 2023, June 2023 and July 2023. The Tenant stated that shortly after moving into the Residential Property issues started. The Tenant stated that there is significant water damage and leaking in the Residential Property, which has resulted in mold. The Tenant stated that she first noticed the issue back in June of 2021. The Tenant stated that she notified the property manager about the issue. The Tenant stated that very little work was complete to repair the issue. The Tenant stated that in November 2022 mold became very bad. The Tenant stated that the property manager said they would paint over the mold but that never happened.
- [11] The Tenant stated that environmental health inspected the Residential Property and provided three different reports dated May 15, 2023, June 12, 2023 and July 5, 2023. The Tenant stated that the July 5, 2023 report concluded the work was not complete from the May 15, 2023 report and that the Landlord had until July 13, 2023 to complete the work. The Tenant stated that the work was not complete as of the date of the hearing.
- [12] The Tenant stated that she stayed with a friend for two weeks just because of the state of the Residential Property. The Tenant submitted numerous photographs and videos into evidence showing the state of the Residential Property. The Tenant stated that the Residential Property is a fire hazard and a lot of work is required.

Landlord's Evidence and Submissions

- [13] The Landlord's representative stated that the Residential Property needs renovations and that the issues mentioned by the Tenant were going to be repaired during the renovations. The Landlord's representative stated that he did attempt to find the leak, but was unable to locate it. The Landlord's representative stated that he did not receive any of the environmental health reports, and only learned of them when the Tenant provided a copy to him. The current plan is to fix the issues once the Tenant vacates the Residential Property. The Landlord's representative stated that he responded quickly but was hard to find professionals to do the work.

Analysis

- [14] 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.*

- [15] The Officer notes that in such applications it is the Tenant's burden or onus to prove on a balance of probabilities their claim(s). The Officer finds that after reviewing the evidence in its totality, and considering the testimony of the parties, that the Tenant has proven their claim.

- [16] The Officer finds that despite the Landlord's property manager investigating the issues brought forward by the Tenant, that no additional steps or remedies were taken. The Officer finds that an unreasonable amount of time has passed and very little action was taken by the Landlord to remedy, repair or provide reasonable justification for such delays. The Officer finds that the Landlord did not follow nor met any of the deadlines set out in the Environmental Health Reports dated May 15, 2023 and July 5, 2023. The Officer does not find the Landlord's representative's argument compelling that *they were unaware of the reports*. The Officer finds that the Landlord's property manager and representatives were aware of the issues, and that it is the Landlord's responsibility to provide the Tenant with updated and accurate contact information.
- [17] Further, the Officer finds that the Landlord cannot simply *wait until the Tenant moves out* before starting such repairs. The Landlord's responsibility to maintain and repair the Residential Property is a statutory requirement, one that *must* be met throughout the tenancy agreement. The Officer finds that the evidence concludes that the Landlord did not meet their statutory requirement pursuant to subsection 28.(1) of the *Act*.
- [18] The Officer finds that the Tenant has provided sufficient evidence to substantiate their claim for a return of rent. Specifically, the Officer notes that the video evidence provided by the Tenant demonstrates a serious water leak, which has resulted in water damage and mold.
- [19] The Officer finds that the Application is allowed. The Landlord shall return and pay the Tenant \$3,450.00 which is for May 2023, June 2023 and July 2023 (\$1,150.00 x 3 months). Further, the Officer finds that the Landlord shall carry out the repairs to the Residential Property as required by the Environmental Health report dated July 5, 2023. The following shall be complete:
- *Repairs must be conducted to the unit to stop water infiltration and water damaged building materials must be removed (wood, insulation, drywall, etc.) and replaced properly as needed;*
 - *Repairs must be completed to the home to ensure it is weatherproof, damp-proof, vermin-proof and safe and sanitary in every respect; and*
 - *Ensure the source of excess moisture is found and remediated.*
- [20] **The Landlord shall provide a written update with photos of the completed repairs to the Rental Office and Environmental Health once the above repairs are complete. Further, the Officer finds that until the above listed repairs are complete and verified by the Rental Office and/or Environmental Health the Officer reduces the rent for the Residential Property by \$500.00 to \$650.00 due on the 7th day of each month, pursuant to sub-subsections 85.(1)(c) and (e) of the *Act*.**
- [21] The Officer notes that if the named repairs are not complete in a reasonable period of time. The Tenant may apply to the Rental Office for a further reduction in rent, and the Landlord may be subject to an administrative penalty pursuant to subsection 93.(1) of the *Act*.

Conclusion

- [22] The Application is allowed.
- [23] The Landlord shall pay the Tenant \$3,450.00 on or before August 31, 2023.
- [24] The Landlord shall repair the Residential Property as directed by the July 5, 2023 Environmental Health report.
- [25] The Landlord shall provide a written update with photos of the completed repairs to the Rental Office and Environmental Health once the repairs are complete.
- [26] Rent for the Residential Property is \$650.00 due on the 7th day of the month until the listed repairs are complete and verified by the Rental Office and/or Environmental Health.
- [27] The Second Application is allowed, the Notice is invalid and the tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$3,450.00 on or before August 31, 2023.
- B. The Landlord shall make the following repairs to the Residential Property forthwith:

Repairs must be conducted to the unit to stop water infiltration and water damaged building materials must be removed (wood, insulation, drywall, etc.) and replaced properly as needed;

Repairs must be completed to the home to ensure it is weatherproof, damp-proof, vermin-proof and safe and sanitary in every respect; and

Ensure the source of excess moisture is found and remediated.

- C. The Landlord shall provide a written update with photos of the completed repairs to the Rental Office and Environmental Health once the repairs are complete.
- D. Rent for the Residential Property is \$650.00 due on the 7th day of the month until the listed repairs are completed and verified by the Rental Office and/or Environmental Health.
- E. The Notice is invalid and the tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 1st day of August, 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.