

Introduction

- [1] On June 26, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application was filed seeking:

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.

The Particulars on the application stated:

"failure of mold inspection, eviction threats, failure to fix heat (zone valve) since Dec 2019, failure to allow me to contact office, failure to renovate, withholding information that affects our health, ignoring health concerns from mold."

- [2] On July 5, 2023, the Tenant sent an email to the Rental Office with a list various issues and concerns. The email stated the Tenant was requesting a return of rent in the amount of \$19,440.00 for two years of rent. The Tenant stated she was:

"requesting my rent to be payed back to me in full for the entire time my requests, phone calls, emails and home visits were ignored/handled improper in the amount of \$19,440."

- [3] On July 14, 2023, the Tenant sent an email to the Rental Office. The Tenant stated she was requesting a return of rent for July 2023 and not to have to pay rent going forwarded until repairs have been completed. She stated the Landlord *"failed heath inspectors orders, stressed me with an eviction and refused to take it since the first day of July."*

- [4] The Tenant also stated she was seeking the reimbursement for purchasing a dehumidifier, three fans, and two air purifiers. She stated *"Each fan was \$30 at giant tiger and air purifies were \$20 each I have two. Dehumidifier was \$150."*

- [5] On July 26, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and two Representatives for the Landlord participated.

Issues to be Decided

- i. Is the Tenant entitled to a return of rent?
- ii. Is the Tenant entitled to withhold rent until repairs have been completed?
- iii. Is the Landlord required to reimburse the Tenant for the cost of a dehumidifier, three fans, and two air purifiers in the amount of \$280.00?

Summary of the Evidence

- [6] In December of 2019, the Tenant and the Landlord entered into a written, month-to-month rental agreement for the Residential Property. The Residential Property consists of a unit in a 21-unit building (the "Building"). Rent is \$810.98 per month due on the first day of the month. A security deposit of \$795.00 was paid.

Tenant's Evidence and Submissions

- [7] The Tenant stated there has been a tarp on the roof of the Building since 2019. Water has been leaking into the Residential Property and the leak has not been fixed. The heat in the Residential Property is not working and it has not been fixed. There are no screens on the Tenant's windows. The Tenant stated the Landlord is not fixing things in a timely manner and is ignoring her emails and portal requests.
- [8] There are mold issues in the Residential Property and the Tenant's baby is sick because of the mold. The Tenant submitted a copy of a doctor's note into evidence stating the baby is sick from mold. The Landlord had a company attend the Residential Property to inspect for moisture and mold but the company told the Landlord there was no moisture or mold in the unit.
- [9] The Tenant had Environmental Health ('E.H.") inspect the Residential Property. E.H. found mold and ordered the Landlord to repair a fan, replace a window, and then clean the mold in the Residential Property. E.H. also ordered the Landlord to determine the cause of the hearing concerns in the Residential Property. The Tenant submitted a copy of the E.H. report into evidence.
- [10] The Tenant stated the fan has been repaired. She stated she had to buy a dehumidifier (\$150.00), fans (\$30.00 x 3), and air purifiers (\$20.00 x 2) because of the moisture and mold. The Tenant stated she and her baby have to sleep in the living room because there is mold in the basement where they sleep. She stated the Landlord is ignoring her health issues.
- [11] The Tenant stated her phone number has been blocked by the Landlord and she does not know if the Landlord is receiving the messages that she is sending them. She has had issues with a neighbor and the Landlord only moved the neighbor to another unit instead of evicting them.

Landlord's Evidence and Submissions

- [12] B.C. stated the Tenant's number was blocked from calling the Landlord's emergency line. B.C. stated the Tenant had called 71 times in 21 days for non-emergency issues. The Tenant was told to use the Landlord's online portal for non-emergency issues. A copy of this message was submitted into evidence.
- [13] B.C. stated the Landlord was only notified last month of the mold issues in the Residential Property and hired a company to inspect the problem. The company told the Landlord there was no mold or moisture and the Landlord took the company at their word. After the Landlord was notified of the mold issues by E.H., the Landlord started remediation of the issues by repairing what was required by E.H. B.C. stated the fan has been repaired, a window has been ordered and will be installed when it arrives, and the mold will be cleaned after the window has been installed.
- [14] B.C. stated the Landlord had a company attend to check the zone valve in the Residential Property but there was no problem found with the zone valve. With regards to the water damage and tarp on the roof, B.C. stated the current property management company was not managing the property in 2019 when the water damage occurred.
- [15] B.C. stated it is the Landlord's duty to maintain the Residential Property in a state of repair and ordinary cleanliness. He stated the Landlord has done this and the Tenant should not receive a return of rent. B.C. stated it is the Tenant's burden to prove and the Tenant has not done so. B.C. stated the Landlord has sent repair companies to the Residential Property whenever the Tenant has notified the Landlord of issues.
- [16] B.C. stated the only items of monetary value the Tenant was seeking was \$280.00 for the cost of the fans and dehumidifier. He stated the other items the Tenant is seeking compensation for has no dollar figure and would be considered pain and suffering.

Analysis

- [17] Tenant is seeking a return of rent for two years in the amount of \$19,440.00 for various issues. She is also seeking a return of rent for July 2023 and to not have to pay future rent until repairs have been completed. She is also seeking compensation for purchasing a dehumidifier, three fans, and two air purifiers in the amount of \$280.00.

Stress and Health Issues

- [18] The Tenant has requested a return of rent due to ongoing stress and health issues. However, the authority of the Officer to issue a monetary order for a return of rent is limited by the Rental Office's jurisdiction. The Officer notes the Act does not have the jurisdiction to allow the Officer to award non-pecuniary damages such as pain and suffering for ongoing stress or health issues.

Repairs

- [19] The Tenant has requested a return of rent and not to have to pay future rent because the Landlord has not completed repairs in a timely manner. Subsection 28.(1) of the Act states:

28.(1) 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.

- [20] Subsection 9.(a) of the *Public Health Act Rental Accommodation Regulations* (the "Regulations") states:

The owner of any dwelling shall, when necessary

(a) carry out repairs or alterations to such dwelling in order to make it sound, weatherproof, damp-proof, vermin-proof, safe and sanitary in every respect.

- [21] Both parties had conflicting testimony as to whether repairs were being attended to in a timely manner or at all. Neither of the parties had any independent witnesses testify at the hearing to further clarify the issue of the repairs. The Tenant has the burden of proof to establish a claim for a return of rent or a request not to pay future rent. The Officer finds that the Tenant has not established, on a balance of probabilities, that the Landlord has contravened subsections 28.(1) of the Act or 9.(a) of the Regulations. Therefore, the Tenant's claim for a return of rent for \$19,440.00 and not to have to pay future rent until repairs have been completed is denied.

Blocking the Tenant's number

- [22] B.C. stated the Tenant's phone number was blocked after she contacted the property manager 71 times in 21 days for non-emergency issues. Subsections 11.(2)(h) and 29.(2),(3) of the Act state:

11.(2) The landlord shall ensure that the tenancy agreement complies with the requirements of this Act and the regulations and includes

(h) the name and contact information of any person the tenant is to contact for emergency repairs.

29.(2) A tenant of a rental unit shall provide notice as soon as practicable to the landlord or the contact person referred to in subsection (3) when emergency repairs are needed to the rental unit.

29.(3) The landlord shall provide the name and contact information of a person the tenant is to contact for emergency repairs and shall post that information in a common area of the residential property.

- [23] The Act requires the Tenant to have the ability to contact a representative of the Landlord if there are emergency repairs required outside of the property manager's business hours. The Officer therefore finds that the Landlord shall credit the Tenant in the amount of \$810.98 for the July 2023 rent, in lieu of not having the ability to contact an emergency representative.
- [24] The Officer finds that a return of the July 2023 rent is reasonable as not allowing the Tenant to have the ability to contact an emergency representative is a contravention of the Act and could result in the health, safety, and housing standards required by law of the Tenant or other tenants to be negatively affected. Furthermore, the Landlord shall ensure the Tenant has the name and contact information of any person the Tenant is to contact for emergency repairs.

Reimbursement

- [25] The Tenant has requested reimbursement for purchasing a dehumidifier, three fans, and two air purifiers. The Officer notes the Landlord did hire a company to inspect the Residential Property, but that company failed to identify any moisture or mold. E.H. found that there was moisture and mold in the Residential Property and is requiring the Landlord to repair and clean the Residential Property.
- [26] Although the failure of the company to identify the mold or moisture was not the fault of the Landlord, the Officer notes that the dehumidifier, fans, and air purifiers will assist to minimize the moisture and mold in the Residential Property until the Landlord has completed all the repairs as required by E.H. Therefore, the Officer finds that the Landlord shall reimburse the Tenant in the amount of \$280.00.
- [27] **The Officer reminds the Landlord that it is their responsibility to keep the Residential Property in a good state of repair that complies with the health, safety and housing standards required by law. If the Tenant brings complaints forward, it is the responsibility of the Landlord to investigate and, if required, fix the complaints in a timely fashion. Failure to do so may result in the Tenant filing another application.**

Conclusion

- [28] Application is allowed in part.
- [29] The Landlord shall pay or credit the Tenant \$280.00 on or before September 1, 2023.
- [30] The Landlord shall credit the Tenant one month's rent in the amount of \$810.98.
- [31] The Landlord shall ensure the Tenant has the name and contact information of any person the Tenant is to contact for emergency repairs.
- [32] The Landlord shall continue to take reasonable steps to address the issues documented in the letter from Environmental Health in a reasonable timeframe.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay or credit the Tenant \$280.00 on or before September 1, 2023.
- B. The Landlord shall credit the Tenant one month's rent in the amount of \$810.98.
- C. The Landlord shall ensure the Tenant has the name and contact information of any person the Tenant is to contact for emergency repairs.
- D. The Landlord shall continue to take reasonable steps to address the issues documented in the letter from Environmental Health in a reasonable timeframe.

DATED at Charlottetown, Prince Edward Island, this 15th day of August, 2023.

(sgd.) Mitchell King
Mitchell King
Residential Tenancy Officer

NOTICERight 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.