

Introduction

- [1] On July 21, 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 dispute a Notice of Termination (Form 4); and

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.

- [2] The Particulars of the Application stated:

"I am seeking comp/R.O for the amount of 6 months due to negligence of [the Landlord]. This is to cover the replacement of my belongings. I was without a working toilet for 3 / 4 weeks, no bedroom or bed for over 2 months from mold. This return of rent is \$4,542.00."

- [3] Attached to the Application was an Eviction Notice (Form 4A) dated August 11, 2023, effective August 31, 2023, (the "Notice"). The Notice was served on the Tenant in person on August 11, 2023. The Notice was served on the Tenant for the following reason:

You have not paid your rent in the amount of \$757.00.

- [4] On September 7, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and the Representative of the Landlord participated.

Issues to be Decided

- i. Is the Tenant entitled to a return of rent or compensation?
- ii. Does the Tenant have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [5] In October of 2020, the Tenant and the Landlord entered into a verbal month-to-month tenancy agreement for the Residential Property. The Residential Property consists of a single apartment in six-unit building. Rent is \$757.00 per month due on the first day of the month. A security deposit of \$500.00 was paid.

Tenant's Evidence and Submissions

- [6] The Tenant stated there were moisture issues soon after he moved into the building. He stated he told the Landlord but there was no reply. When the Landlord did respond, a contractor was sent to the property and the tub surround was replaced. The Tenant stated the moisture issue was not dealt with at the that time.
- [7] The Tenant stated there was mold in the Residential Property and he had to contact Environmental Health ("E.H.") to inspect the property. After the inspection E.H. sent a letter to the Landlord then the Landlord started addressing the mold issue. A copy of the letter was submitted into evidence.
- [8] The Tenant stated that the mold has ruined furniture and other items in the unit. He stated he is requesting for \$4,542.00 for either a return of rent for six months or as financial compensation for the damaged property. The Tenant stated he has not paid rent for August or September 2023.

- [9] The Tenant stated he is planning on vacating the Residential Property but is requesting more time to be able to find another place to live. The Tenant agreed with the Landlord's submission that some of the Tenant's emails to the Landlord were sent to an incorrect Gmail email address instead of the Landlord's Hotmail email address. The Tenant submitted copies of the emails into evidence. The Tenant submitted copies of photographs of the interior of the Residential Property into evidence.
- [10] C.M. stated that everything the Tenant stated regarding the mold in the unit is correct. She stated she has been visiting the Residential Property for two years and there have been mold issues during that time.

Landlord's Evidence and Submissions

- [11] The Representative stated the Tenant owes rent for August and September 2023 (\$757.00 x 2) totaling \$1,514.00. He stated that some of the emails about issues in the unit that the Tenant submitted into evidence were sent to a Gmail email address that does not belong to the Landlord, as opposed to the Landlord's Hotmail email address. The Representative stated anytime the Tenant sent a message to the correct email address regarding an issue, the issue was dealt with.
- [12] The Representative stated the first time the Tenant told him about any issues was on June 28, 2023. The Representative stated a company was hired and repairs were completed within a week to the bathroom and to part of the floor. He stated he requested that the Tenant purchase a dehumidifier for any moisture issues.
- [13] The Representative stated he sent a message to the Tenant regarding paying rent for August 2023 but did not get a reply. He served the Tenant the Notice on August 11, 2023. On August 15, 2023, the Representative received a letter from E.H. with suggestions on how to rectify moisture issues in the unit. The Representative hired a contractor to follow up with the suggestions submitted by E.H. On August 16, 2023, a contractor and cleaning person went to the property but there was an altercation between the Tenant and the contractor and cleaning person and no work was completed at that time.
- [14] The Representative contacted E.H. about the altercation and E.H. stated the Tenant was required to move his belongings to the middle of each room for the work to be completed. The Representative forwarded this information to the Tenant but the Tenant did not respond. The Representative stated he then received the Application. The Landlord stated the Tenant's toilet was working when the bathroom was under construction, contrary to what the Tenant put on the Application. He stated that he has not seen any damages to the Tenant's belongings.

Analysis

Return of Rent or Compensation

- [15] The Tenant stated he is requesting \$4,542.00 for either a return of rent for six months or as compensation "due to negligence" of the Representative for having his personal property damaged by mold. The Officer notes that the Tenant has the burden of proof to establish a claim for a return of rent or compensation from the Landlord.
- [16] The Tenant's requests are pursuant to subsections 85.(1)(b) and (d) of the Act which state after hearing an application, the Director may make an order:

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.

[17] The Officer notes that evidence submitted by the Tenant shows that the first time the Representative was contacted about any issues was in an email dated June 28, 2023. Both parties agreed that the Representative had the tub surround repaired and the Representative stated a part of the floor was replaced. Both parties also agreed that the Representative acted promptly after being contacted by E.H.

[18] The Tenant submitted a copy of an email dated August 24, 2021, with complaints about the property. The Officer notes that this email was sent to the incorrect Gmail address and not the Landlord's Hotmail address. Another email submitted by the Tenant was dated July 20, 2023, which was also sent to the incorrect Gmail address. Therefore, the Landlord was not made aware of any other issues and would not be expected to remedy what he is not aware of.

[19] Section 28 of the Act states:

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] Based on the evidence provided by the parties, the Officer finds that the Landlord has taken the appropriate steps to remedy the problems in the Residential Property after being notified by the Tenant or E.H. The Officer finds that the Landlord had complied with the requirements of the Act and a return of rent is not warranted in this case.

[21] Furthermore, the Tenant has not established that he has incurred a financial loss as a result of the mold issues in the Residential Property. The Tenant has not submitted any documentary evidence, such as receipts or invoices, showing the cost of any loss incurred. Therefore, the Officer is unable to issue a monetary order in favour of the Tenant.

Notice of Termination

[22] The Landlord stated the Tenant has failed to pay rent for August and September 2023 in the amount of \$1,514.00. The Act states:

Tenant shall pay rent when due

19. (1) A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.

Landlord's notice for non-payment of rent

60.(1) A landlord may end a tenancy if rent is unpaid after the day it is due, by giving a notice of termination effective on a date that is not earlier than 20 days after the date the tenant receives the notice.

Tenant may dispute notice or pay unpaid rent

60.(4) Within 10 days after receiving a notice of termination under this section, the tenant may

- (a) *pay the overdue rent, in which case the notice of termination has no effect; or*
- (b) *dispute the notice of termination by making an application to the Director under section 75.*

[23] Based on the totality of the evidence, the Officer finds that the Notice was properly served on the Tenant and the Tenant failed to pay the outstanding rent within 10-days of receiving the Notice. The Officer therefore finds that the Landlord has established a valid basis for terminating the rental agreement due to non-payment of rent in the amount of \$1,514.00.

Conclusion

- [24] The Application for a return of rent and compensation is denied.
- [25] The Application for disputing the Notice is denied and the Notice is valid.
- [26] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on September 18, 2023. **The Tenant and all occupants** shall vacate the Residential Property by this time and date.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on September 18, 2023. **The Tenant and all occupants** shall vacate the Residential Property by this time and date.
- B. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, this 8th day of September, 2023.

(sgd.) Mitchell King

Mitchell King
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 7 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.