

## Introduction

- [1] On September 29, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking a return of rent due to alleged failure to repair and/or maintain the rental unit.
- [2] The Tenant is seeking compensation in the amount of **\$7,917.00** in rent returned from the period of October 2022 to October 2023.
- [3] All relevant documents (including the Notice of Hearing and Combined Evidence Package) were properly served in accordance with subsection 100.(1) of the *Act*.
- [4] On November 28, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, represented by legal counsel. The Landlord appeared, representing themselves.

## Issues to be Decided

- i. Did the Landlord fail to repair and/or maintain the Residential Property? If so,
- ii. Is the Tenant entitled to a return of rent?

## Summary of the Evidence

- [5] On September 1, 2011 the parties entered into a written fixed term tenancy agreement for the Residential Property. The tenancy agreement converted to a month-to-month agreement. Rent is \$609.00 due on the first day of the month. A security deposit of \$450.00 was required and paid.

### Tenant's Evidence and Submissions

- [6] The Tenant submitted 71-pages of documents into evidence including a summary of the material facts, an exhibit list, a list of e-transfer rent payments, photographs, text message conversations between the parties, instructions from pest management, and an Environmental Health Report (the "Report").
- [7] The Residential Property was damaged due to Hurricane Fiona. The Tenant advised the Landlord of the damage to the rental unit, specifically damage to the roof, causing water leaks and water damage. The Tenant vacated the rental unit because she felt unsafe due to the presence of rodents, mold and the water leaking. The Tenant remained away from the rental unit all of October 2022.
- [8] The Tenant felt that the Landlord did not provide adequate updates throughout the restoration period. However, on November 16, 2022 the Landlord advised the Tenant that the restoration work was complete and that the painting and cleaning also was complete.
- [9] The Tenant returned to the Residential Property shortly after the Landlord's advisement. The Tenant found many areas of the rental unit were covered in dust, sanding, and rodent droppings throughout the rental unit. Some light switches were not working, and a number of the Tenant's personal belongings were damaged and/or missing. The Tenant argues that the Landlord knew or ought to have known the condition of the rental unit before advising her she could move back into the rental unit.
- [10] The Tenant did not move back into the rental unit, only periodically returning to the rental unit to clean and attempt to remediate the issues. The Tenant admitted to having some personal struggles during this time and feared of displacement. As a result, the Tenant admitted to not contacting the Landlord during this time.

- [11] On January 12, 2023 the Tenant did contact the Landlord by e-mail regarding her concerns. The Tenant received a response from the Landlord by e-mail on January 16, 2023. The Tenant testified that the Landlord mostly ignored her request for a return of rent and having the rental unit professionally cleaned. The Landlord only mentioned paying for the damage to her personal belongings and that he may be selling the Residential Property within the year.
- [12] The Tenant testified that the concerns regarding rodents and mold remained throughout the year. The Tenant contacted Environmental Health on May 26, 2023; an inspection and the Report shortly followed. The Tenant provided the mailing address of the Landlord to Environmental Health. The Tenant was not aware the Landlord had a new mailing address and argued it was the responsibility of the Landlord to update the Tenant with that information.
- [13] The Tenant testified that she only lived in the rental unit for two weeks in July 2023. However, she vacated the rental unit due to a cockroach infestation and due to her symptoms of coughing and sneezing as a result of the rodent and mold issues.
- [14] The Tenant argues that the Landlord neglected his duty to repair and maintain the rental unit in a reasonable time. The Tenant is seeking 13 months of returned rent due to the lack of repairs and remediation (October 2022 to October 2023). The Tenant claims the cleaning of the rental unit was never completed by the Landlord and the Landlord neglected to hire professional cleaners. The Tenant cleaned the rental unit herself. The Tenant claims that the rodent issue started in September 2022 but was not resolved until November 2023. The Tenant claims that the mold issue was confirmed by Environmental Health in the spring of 2023 and not resolved until November 2023.
- [15] The Tenant referenced a cockroach infestation during July 2023 which lead to a Pest Management company remediating from July 2023 to September 2023 (including three sprays and an inspection). The Tenant referenced Order SOT-19765-11 of the *Landlord and Tenant Board of Ontario*.

#### **Landlord's Evidence and Submissions**

- [16] The Landlord submitted 66-pages of documents into evidence including a written submission, text message and e-mail communication between the parties, communication between the Landlord and professionals, a summary of the repairs and remediation completed, photographs, a copy of the tenancy agreement and a letter reference from another tenant of the Landlord.
- [17] The Landlord testified that due to the demand for contractor and/or professional tradespersons after Hurricane Fiona, it was difficult to get the repairs completed quickly. The Landlord testified that the restoration work was completed November 16, 2023. The Landlord informed the Tenant that she was able to move back into the rental unit. The Landlord testified that he did his best to keep the Tenant up to date regarding timelines but due to the demand, there was a lot of uncertainty and delays throughout the process. The Landlord testified that he painted and cleaned the rental unit but did not touch any of the Tenant's personal items.
- [18] The Landlord testified that he did provide mouse traps and believed the mouse issue was resolved. The Landlord testified that after the restoration was complete, the Tenant did not bring up any issues regarding the rental unit until January 2023. The Landlord testified that he did not hear from the Tenant again until July 17, 2023.
- [19] The Landlord testified that he was not made aware of the mold issue until he received the Notice of Hearing. The Landlord testified that he immediately contacted Environmental Health and learned the Report was sent to the wrong mailing address. The Landlord since remediated the mold, ventilation issue and pest infestation. The Landlord testified that such a large return of rent is not fair and that he did everything he could to remediate and repair the rental unit. The Landlord suggested that if the Tenant communicated with him, many of these issues could have been resolved much faster.

## Analysis

- i. ***Did the Landlord fail to repair and/or maintain the Residential Property? If so,***
- ii. ***Is the Tenant entitled to a return of rent?***

[20] The Application is made in accordance to section 75 of the *Act* and is seeking compensation due to the Landlord's alleged failure to repair and/or maintain the Residential Property pursuant to subsection 28.(1) of the *Act*. The relevant law is as follows:

**28. *Obligation to repair and maintain***

- (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.*

[21] Further, clauses 9.(a) and (c) of the *Public Health Act Rental Accommodation Regulations* (the "*Public Health Act*") states:

**9. *Maintenance of premises***

*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;*
- ...
- (c) *take necessary precautions and undertake necessary treatment to prevent or eliminate infestations by cockroaches, bedbugs, fleas, silverfish, weevils, flies, rats, mice and any or all pests.*

[22] The Application is seeking a finding that the Landlord failed to repair and/or maintain the Residential Property and that the Tenant is entitled to compensation in the form of a return of rent. In such applications, it is the person(s) making the application to prove, on a balance of probabilities, their claim(s). This means the applicant must provide the decision-maker sufficiently clear, convincing and cogent evidence to prove their claim.

### **Preliminary Note – The Law and the Application**

[23] The facts presented in the Application stretch over the timeline of September 2022 to November 2023. This means that parts of the alleged contravention happened before the enactment of the *Act*. On April 8, 2023 the *Act* replaced the *Rental of Residential Property Act* (the "*Former Act*") as the governing law for landlords and tenants on Prince Edward Island.

[24] Subsection 112.(2) of the *Act* states:

***Transitional – contravention***

*A contravention of a provision of the former Act that occurred before the coming into force of this Act, but in respect of which no application, hearing or other proceeding was started before the coming into force of this Act, **may be dealt with under the former Act as though that Act were still in force.** [emphasis added]*

- [25] When determining which law applies, the Officer notes that the plain and ordinary language used in subsection (2) provides the decision-maker with discretion and the language used in subsection (2) is less restrictive as other provisions under section 112 of the *Act*. With this in mind, the Officer notes section 6.1 of the Former Act provides substantially the same statutory requirements for a landlord as section 28.(1) of the *Act*. Further, both parties participated fully during the proceeding and would not be prejudiced by the *right of appeal* changes from the Former Act to the *Act*. Finally, the compensation sought by the Tenant is permitted under both the Former Act and the *Act*. Therefore, the Officer finds it appropriate to adjudicate on the merits of the Application under the *Act*.

### The Findings

- [26] The Tenant has provided sufficient evidence to establish their claim that the Landlord failed to maintain the Residential Property as required by subsection 28.(1) of the *Act* and subsection 9.(a) and (c) of the *Public Health Act*. The Officer relies on the photographs provided by the Tenant (Exhibit F), which illustrates the condition of the rental unit after the restoration in November 2022. The repairs were complete; however, the condition of the rental unit was below the expected standard required by subsection 28.(1) of the *Act* and 9.(a) and (c) of the *Public Health Act*.
- [27] Further, the Officer finds that the Tenant has established that the Landlord did not remediate, and/or repair the named issues on the Report dated June 2, 2023 in a reasonable time. The Officer notes that the Landlord did remediate and repair all the issues on the Report as of November 28, 2023. The Officer further notes that the Landlord's submission is that he was not aware of the Report due to a wrong mailing address provided to Environmental Health.
- [28] The Officer finds that this failure is not the Tenant's responsibility. The Landlord is required to provide the Tenant with updated information such as a mailing address. Subsection 11.(6) of the *Act* reads:

#### ***Change in information***

- (6) *A landlord shall, as soon as practicable, notify the tenant in writing of a change to the information required to be provided under clauses 2(b) and (e).*
- [29] Sub-subsection 11.(2)(e) refers to the address for service and telephone number of the landlord, or the landlord's agent and the tenant. Due to the Landlord's non-compliance to this clause, the Landlord was not made aware of the Report until the Notice of Hearing was provided to the Landlord on October 16, 2023. The Landlord cannot shield himself from the remedy sought due to his non-compliance with the *Act*. However, the evidence suggests, in its totality, that the Landlord acted quickly and within a reasonable amount of time when made aware of the issues by the Tenant. The parties had a conversation in July 2023 and no mention of the Report or any issues other the cockroaches were brought forward by the Tenant.
- [30] The Officer finds that the Tenant, by her own admission, did not always communicate to the Landlord the issues. Therefore, the Officer finds that the Landlord cannot be held liable to pay compensation for times where he was not made aware of the specific issues which the Tenant may have been experiencing. Therefore, the Officer finds that the Tenant is entitled to a return of rent in the amount of **\$1,827.00**. The Application is allowed, in part and the calculations are as follows.

- **\$609.00 – The Tenant's inability to live in the rental unit due to restoration for October 2022;**
- **\$609.00 – The return of November 2022 rent due to the breach of ss. 28.(1) of the *Act* and 9.(a) and (c) of the *Public Health Act*; and**
- **\$609.00 – Failure to comply with subsection 11.(6) of the *Act*, resulting in a delay in the remediation and/repairs of the Report.**

**Conclusion**

[31] The Application is allowed, in part.

[32] The Landlord shall pay the Tenant \$1,827.00 on or before December 31, 2023.

**IT IS THEREFORE ORDERED THAT**

A. The Landlord shall pay the Tenant \$1,827.00 on or before December 31, 2023.

**DATED** at Charlottetown, Prince Edward Island, this 8th day of December, 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.