

Introduction

- [1] On November 14, 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 disputing an eviction notice pursuant to subsection 62.(4) of the *Act*. Further, the Application seeks compensation for an alleged breach of the *Act*.
- [2] The Tenant is seeking compensation in the amount of **\$5,391.25** in rent returned due to the removal of service, no heat for a period of time and inconveniences as a result of lack of repairs.
- [3] Attached with the Application was an *Eviction Notice* (Form 4(B)) (the “Notice”) dated October 31, 2023 effective March 1, 2024. The Notice was given to the Tenant for the following reason:
- I want possession of the rental unit for: my child or parent.*
- [4] All documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with subsection 100.(1) of the *Act*.
- [5] On December 5, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenant appeared, representing themselves with a witness. The Representative appeared, representing the Landlord.

Issues to be Decided

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

Summary of the Evidence

- [6] In October 2017 the parties entered into a written fixed term tenancy agreement for the Residential Property. The agreement converted to a month-to-month agreement. The Residential Property is one-half of a side-by-side duplex (the “Duplex”). Rent is \$1,111.00 due on the first day of the month. A security deposit of \$1,100.00 was required and paid in September 2017.

Landlord’s Evidence and Submissions

- [7] The Landlord submitted 88 pages of documents into evidence including a written submission, text message conversations between the parties, emails between the Landlord and contractors, and electricity consumption reports.

The Eviction

- [8] The Notice is for the Landlord’s son to occupy the Residential Property. The Representative testified that the Landlord’s son currently lives with the Landlord, and for economical and independence reasons, the son is moving into the Residential Property. The Representative testified that the son intends to occupy the Residential Property for the foreseeable future as it is close to his job and he is familiar with the Residential Property.
- [9] The Representative testified that there is no allegation of bad faith from the Tenant and that the Landlord has the right under the law to take back possession of the Residential Property for such a use. The other side of the Residential Property was not picked because the rent is higher and the other tenants are still in a fixed term agreement.

Removal of Service

- [10] The Landlord had heat pumps installed in the Residential Property, which are now the primary source of heat. Heat is an included service in the tenancy agreement. Electricity is the responsibility of the Tenant. The parties agreed to this change in the heating source. The Representative testified that the heat source from the oil tank was turned back on after the Tenant brought the complaint forward. The Representative testified that the Act is not intended to punish landlords for trying to work with their tenants. The agreement was transparent and the Tenant benefitted from the change as they got air conditioning in the summer months. The electrical consumption reports provided into evidence show that the consumption has not significantly increased since the installation of the heat pumps. The Representative testified that the monetary amount the Tenant is seeking is punitive and exuberant.

No Heat for Five Weeks

- [11] The Representative testified that a plumber was called immediately regarding the Tenant's complaint of no heat. The plumber believed it was a specific issue, which ended up not being the source of the problem. The Representative testified that it became an intermittence issue, which took the plumber several attempts and visits to fix. The Representative testified that he disagrees with the amount of compensation the Tenant is seeking. The Representative testified that the Landlord took all reasonable steps to have the issue resolved and did not foresee the delays.

Lack of Repairs

- [12] The Representative testified that the Landlord has been responsive and attentive throughout the tenancy. The Residential Property has received numerous renovations and repairs throughout the tenancy. The Representative testified that the documentary evidence will show that the Landlord responded quickly to the Tenant's concerns and that the Landlord always followed the advice and/or instructions from the professionals. Regarding specifically the roof repairs, the Representative testified that the roof repairs were delayed due finding professionals to do the work and finding the source of the water leak. The Landlord's written submission provides greater clarity into the Landlord's position as it relates to the general repairs of the Residential Property.

Tenant's Evidence and Submissions

- [13] The Tenant submitted 297-pages of documents into evidence including a written submission, text message communication between the parties, photographs, and two videos of water leaking over a window.

The Eviction

- [14] The Tenant testified that the Landlord did not take her circumstances into consideration, and only considered the neighbours circumstances. The Tenant testified that it is hard to find affordable housing in this current market. The Tenant questioned why the Landlord's son needed her rental unit when the Landlord and her family lived in the other unit for five years.

Removal of Service

- [15] The Tenant testified that in February 2023 the Landlord informed her that some renovations and repairs were happening in her rental unit. As part of the renovations, heat pumps were installed in the rental unit. The Tenant testified that heat is an included service, but was removed without the approval of the Rental Office. The Tenant testified that she agreed with the Landlord because she felt she was not in a position to oppose the Landlord's request. The Landlord turned off the furnace without approval, however, did turn the furnace back on after complaint. The Tenant is seeking \$1,225.00 in compensation (\$175.00 x 7 months) for the loss of heat as a service, with the added expense to her electricity bill.

No Heat for Five Weeks

- [16] The Tenant testified that in April 2022 she lost heat and informed the Landlord immediately. The Tenant testified that the plumber arrived at the Residential Property but never went to her rental unit. The plumber returned three or four times over the next 5 weeks to attempt to fix the issue. The Tenant testified that the Landlord did not listen to her and did not attempt to get another plumber to look at the issue. The Tenant is seeking \$833.23 in return of rent for the lack of heat for five weeks. This represents 75% of the monthly rent.

Lack of Repairs

- [17] The Tenant testified that the Landlord has not repaired and/or maintained the Residential Property. The Tenant testified that the rental unit's windows were in poor shape, with leaking and black mold. The Tenant testified that she informed the Landlord of the issues but nothing was done for some time. The Landlord's response and timeline to fix the issues were unreasonable and caused inconvenience and a breach of the Tenant's enjoyment of the Residential Property. The Tenant testified that at one point, the Landlord responded to the Tenant's maintenance issues with a suggestion that the rent was to increase 10%. The Tenant is seeking \$3,333.00 in compensation (\$833.25 x 4 months) for the inconvenience and lack of repairs by the Landlord.

Analysis***Issue i: Does the Tenant have to vacate the Residential Property due to the Notice?***

- [18] The Application is made in accordance to section 75 of the Act and is disputing the Notice. The Landlord's reason for terminating the tenancy agreement is pursuant to sub-subsection 62.(1)(c) of the Act. The relevant law is as follows:

62. Landlord's notice for landlord's use of property

- (1). *A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by*

...

- (c) *a child, parent or a dependent of the landlord or the landlord's spouse.*

- [19] In such applications where there is a dispute over an eviction notice it is the landlord's burden to prove, on a balance of probabilities, their reason(s) for terminating the tenancy agreement. This means the landlord must provide the decision-maker sufficiently clear, convincing and cogent evidence to prove their claim.
- [20] In this case, the Landlord seeks to terminate the tenancy agreement because the Landlord's son intends to occupy the Residential Property, namely the Tenant's rental unit. The nature of the Tenant's submissions was to question the reasons behind choosing the Tenant's rental unit over the neighbouring unit, and that the Landlord did not consider the hardships of the Tenant. The Tenant did not provide any submissions and/or direct evidence to call into question whether or not the Landlord gave the Notice in good faith. The Landlord's son did not provide any direct testimony and/or written testimony regarding his intention to occupy the rental unit.
- [21] Although such evidence is not required, it is the best evidence put forward when attempting to establish good faith. Despite the Landlord not providing such evidence, the Officer concludes that there is no evidence to suggest that the Landlord is acting in bad faith. The Island Regulatory and Appeals Commission made this comment as it relates to a similar set of facts, under the Former Act in LR22-49:

With respect to Mr. Mosher's comments that there are other more suitable units, the Act does not require a lessor to justify the selection of a particular unit other than acting in good faith...

- [22] The Officer concludes that the Notice is valid and the Application as it relates to disputing the Notice is denied. **The tenancy agreement between the parties shall terminate effective 5:00 p.m. on March 1, 2024.** The Tenant and all occupants shall vacate the Residential Property by this time and date.

Issue ii: Is the Tenant entitled to a return of rent?

- [23] The Application is made in accordance to section 75 of the Act and is seeking compensation due to the Landlord allegedly removing a service in the tenancy agreement pursuant to subsection 21.(1) of the Act. Further, the Application seeks compensation for the alleged failure of the Landlord to repair and/or maintain the Residential Property pursuant to subsection 28.(1) of the Act. The relevant law is as follows:

21. Terminating or restricting services or facilities

- (1) A landlord shall not terminate or restrict a service or facility if
- (a) the service or facility is reasonably related to the tenant's use and enjoyment of the rental unit as living accommodations; or
 - (b) the service or facility is a term of the tenancy agreement.

Landlord may terminate or restrict certain services

- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives one month's written notice, in the approved form, of the termination or restriction; and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

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.

- [24] 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

- [25] The Application is seeking a finding that the Landlord breached sections 21 and 28 of the *Act*, 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.

The Removal of Service

- [26] There is no dispute that heat is an included service in the tenancy agreement. Throughout the tenancy the primary source of heat was oil. The evidence and testimony from the parties establishes that the Landlord informed the Tenant that heat pumps were being installed, and the installation was complete in June 2023. The Tenant argues that she agreed because she felt she did not have a choice, and that the installation of the heat pump has caused her electricity bill to increase. The Tenant argues that the Landlord did not provide her with an official form, and/or did not reduce the rent when the Landlord removed the service.
- [27] However, the Officer finds that the Landlord did not breach subsection 21.(1) of the *Act*. The testimony from the parties and the communication between the parties by text message presented in evidence establish that the Landlord did not restrict or terminate the service of heat. The evidence establishes that the Landlord changed the source of heat from oil to electric (the heat pump), however, the Landlord still provided heat. The heating source from oil remains on for the majority of the year as testified by the parties. Yet, with this change in heating source, the Tenant's electricity costs have increased. The Officer finds that with this change in heating source, the Landlord should have reduced the Tenant's rent or covered the additional electrical expenses as a result of the heat pump usage for heating. The Landlord did neither. Therefore, the Officer concludes that the Tenant is entitled to compensation, in the form of a return of rent.
- [28] The Tenant did not provide any electricity bills into evidence to assist in quantifying the Tenant's expenses over the past year. The Tenant only mentions that her bill has increased and is seeking \$175.00 per month for seven months (June to December 2023) in returned rent.
- [29] However, based on the electrical consumption report provided into evidence and the Maritime Electric Energy calculator (available online), the Officer concludes that the Tenant is entitled to \$100.00 per month in returned rent for a seven-month period (June to December 2023) for a total amount of \$700.00.
- [30] Further, the Officer resets the rent for the Residential Property due to the change in heat source and reduces the overall rent by \$100.00 per month. The new rent is \$1,011.00 due on the first day of the month, effective immediately.

No Heat for Five Weeks & Lack of Repairs

- [31] The Officer concludes that the Landlord has not breached section 28 of the *Act*. After reviewing the evidence which includes photographs and extensive communication between the parties the Officer concludes that the Landlord did take reasonable steps to communicate with the Tenant, get professionals and have the repairs completed.
- [32] The Officer notes that there were delays on many of the repairs and issues throughout the tenancy. However, the Officer finds that the delays were not always the fault of the Landlord and that the evidence does not suggest at any point that the Landlord simply did nothing. The Officer references the Island Regulatory and Appeals Commission decision LR23-24 paragraph 12:

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. These delays have been greatly increased as a result of the significant damage done by Hurricane Fiona. The public, in general, is faced with these delays every day. Nothing this fact, the evidence is clear that the Landlord attended to the complaints and repairs in as timely a manner as the current circumstances permit...

- [33] The Officer concludes that the Tenant is not entitled to a return of rent for the no heating and lack of repairs claims.

Conclusion

- [34] The Application is allowed, in part.
- [35] The Notice is valid. The tenancy agreement shall terminate effective 5:00 p.m. on March 1, 2024.
- [36] The Landlord shall pay the Tenant \$700.00 on or before December 31, 2023.
- [37] The rent is reset and reduced by \$100.00 per month.
- [38] **The rent for the Residential Property is \$1,011.00 due on the first day of the month, effective immediately.**

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement shall terminate effective 5:00 p.m. on March 1, 2024.
- B. A certified copy of Order LD23-584 may be filed in the Supreme Court and enforced by Sherriff Services as permitted by the Act.
- C. The Landlord shall pay the Tenant \$700.00 on or before December 31, 2023.
- D. The rent is reset and reduced by \$100.00 per month.
- E. The rent for the Residential Property is \$1,011.00 due on the first day of the month, effective immediately.

DATED at Charlottetown, Prince Edward Island, this 13th 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.