

Introduction & Preliminary Findings

- [1] On December 27, 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 clause 60(4)(b) of the *Residential Tenancy Act* (the "Act").
- [2] Attached with the Application was an *Eviction Notice* (Form 4(A)) (the "Notice") dated December 23, 2023 effective January 13, 2024. The Notice was given to the Tenant for the following reason:

You have not paid your rent in the amount of \$242.45.

- [3] On January 2, 2024 the parties agreed that the Tenant paid the outstanding balance as prescribed on the Notice. As the payment was made within ten (10) days of receiving the Notice, the Notice has no effect pursuant to clause 60(4)(a) of the *Act*. **The tenancy agreement shall continue in full force and effect.**
- [4] On January 3, 2024 the Tenant amended the Application. The Application also seeks a determination that the Landlord breached clause 28(1) of the *Act* by not remediating and removing mold in the Rental Unit. Further, the Tenant seeks a finding that the tenancy agreement be amended to split the cost of electricity and a finding that the Landlord return **\$121.23** to the Tenant for overpayment of electricity expenses.
- [5] All documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with clause 100(1) of the *Act*.
- [6] On January 16, 2024 a teleconference hearing was held at 1:00 p.m. before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing themselves. The Landlord appeared, representing themselves. The Landlord had a witness present for the proceeding; however, the witness did not provide any witness testimony during the proceeding.

Issues to be Decided

- i. Has the Landlord breached clause 28(1) of the *Act*?
- ii. Should the tenancy agreement be amended to split the responsibility for the cost of electricity for the Rental Unit?
- iii. Is the Tenant entitled to a return of half the electricity cost in the amount of \$121.23?

Summary of the Evidence

- [7] On October 1, 2023 the parties entered into a written fixed term tenancy agreement for the Rental Unit. The fixed term ends on April 30, 2024. Rent is \$1,360.00 due on the 25th day of each month. A \$1,360.00 security deposit was required and paid on October 1, 2023.

Tenant's Evidence and Submissions

- [8] The Tenant submitted 86-pages of documents into evidence. The Tenant testified that on January 2, 2024 she paid \$242.45 to the Landlord for an electricity bill for the Rental Unit. The Tenant testified that she knew that electricity was her responsibility but was unaware of an additional heater, dehumidifier and a Venmar air exchange system in the basement. The Tenant testified that due to the regular use of these devices her electricity cost increased from \$66.00 in her first month to \$300.00. The Tenant testified that she runs all these systems for the Landlord and this was not part of the tenancy agreement. As a result, the Tenant argues the electricity bill should be split.

- [9] The Tenant testified that the Rental Unit has a mold issue. The Tenant testified that despite telling the Landlord about the mold the mold continues to exist and that she has attempted to clean the mold many times.
- [10] On December 21, 2023 the Tenant contacted Environmental Health. On January 5, 2024 an inspection was conducted at the Rental Unit. On January 8, 2024 an Environmental Health Report was completed (the "Report").

Landlord's Evidence and Submissions

- [11] The Landlord submitted 73-pages of documents into evidence. The Landlord responded to the Tenant's testimony regarding her electricity bill increasing. The Landlord testified that due to the billing cycle when the Tenant moved into the Rental Unit, she was only responsible for a portion of the electricity bill. The Landlord testified that before the Tenant entered into the tenancy she was provided previous Maritime Electric bills to see the general cost for electricity in the Rental Unit.
- [12] The Landlord testified that he has been attentive to all the Tenant's issues. He has had professionals to the Rental Unit, and has fixed any issues. The Landlord testified that the mold issue has since returned and that he is looking to take further assessments into the issue. The Landlord testified that during an inspection it was found that the dehumidifier was turned off (page 71 of Evidence Package). The Landlord argued that the mold issue could return if such systems are not left on.
- [13] The Landlord testified that the Tenant has not paid January 2024 rent and has outstanding electricity bills. The Landlord argued that the Tenant is breaching the tenancy agreement.

Analysis

- [14] The Application is made in accordance to section 75 of the *Act*. In such applications it is the person making the claim that has the burden to prove, on a balance of probabilities, any and all of their claims. This means that the party must provide the decision-maker sufficiently clear, convincing and cogent evidence to prove their claim.

Issue

- i. *Has the Landlord breached clause 28(1) of the Act?*

- [15] Clause 28(1) of the *Act* states:

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;*
 - (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

- [16] The Officer concludes that there is insufficient evidence to establish that the Landlord has breached clause 28(1) of the *Act*. The Officer comes to this finding after considering the parties' testimony and reviewing the documentary evidence. Specifically, the Officer finds that the Report's findings and the Landlord's evidence, namely, the inspection findings from MSV Renovations and the evidence of steps taken by the Landlord are enough to satisfy the Officer that the Landlord has not breached their duty to repair and maintain the Rental Unit.

Issues

- i. Should the tenancy agreement be amended to split the responsibility for the cost of electricity for the Rental Unit? and*
- ii. Is the Tenant entitled to a return of half the electricity cost in the amount of \$121.23?*

[17] The Officer finds that it is the sole responsibility of the Tenant to pay the electricity for the Rental Unit. The Officer comes to this finding based on the tenancy agreement between the parties. The tenancy agreement found in the Evidence Package page 9 refers to the following services which are not included in the rent and are the responsibility of the Tenant: snow removal, heating and electricity. Further, the Schedule "D" of the tenancy agreement states: "The following items are provided to the tenant and must be returned: generator, dehumidifier, wash and dryer."

[18] The Officer notes that at the core of every tenancy agreement is a "meeting of the minds" which is a fundamental principle to contract law. The Officer finds without sufficient evidence to conclude that there was no "meeting of the minds" that it would be inappropriate to alter the tenancy agreement. As a result, the Tenant is not entitled to a return of half the electricity costs or a split. The Application is denied.

Conclusion

[19] The Application is denied.

[20] The tenancy agreement shall continue in full force and effect.

[21] **Order LD24-036 will be served on the parties by e-mail on January 31, 2024.**

IT IS THEREFORE ORDERED THAT

- A. The Application is denied.
- B. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 31st day of January, 2024.

(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.