

Introduction

- [1] On December 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 seeks a determination that the Landlord breached clause 28(1) of the *Residential Tenancy Act* (the "Act").
- [2] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served in accordance with clause 100(1) of the *Act*.
- [3] On January 23, 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 was represented by (the "Representatives").

Issue to be Decided

- i. Did the Landlord breach the *Act*, and is the Tenant entitled to the remedy sought?

Summary of the Evidence

- [4] On or around September 1, 2018 the parties entered into a written fixed term tenancy agreement for the Rental Unit. The tenancy agreement converted to a month-to-month agreement. The Rental Unit is situated in a 12-unit apartment building (the "Residential Property"). Rent is \$916.00 due on the first day of the month. A security deposit of \$843.00 was paid.

Tenant's Evidence and Submissions

- [5] The Tenant submitted numerous documents into evidence including written submissions, photographs, e-mails between the parties, and a signed letter from another tenant in the Residential Property.
- [6] The Tenant testified that there are skunks nesting under the Residential Property. The Tenant testified that she informed the Representatives on numerous occasions about the skunks. The Tenant testified that she feels like the Representatives are not listening to her. The Tenant testified that there has been little communication and that the skunks continue to nest under the Residential Property.
- [7] The Tenant testified that she does not feel safe walking her dog at night, and that she no longer feels comfortable contacting the Representatives. The Tenant testified that the traps that were placed at the Residential Property were placed at the wrong entrance and likely not there for very long. The Tenant testified that she does not use the other entrance for the Residential Property because it requires a key.

Landlord's Evidence and Submissions

- [8] The Landlord submitted numerous documents into evidence including an e-mail from a professional, and an e-mail exchange with the parties. The Representatives testified that beginning at the end of September 2023, they received a complaint about the skunks at the Residential Property. The Representatives testified that skunks are known to be around the Residential Property. The Representatives testified that they contacted the City immediately. The Representatives testified that most pest control companies will not handle skunks.
- [9] The Representatives testified that the Tenant is the only tenant in the Residential Property bothered by the skunks, and they have received no other complaints. The Representatives testified that the professionals they contacted are careful when it comes to the health and welfare of the skunks. The Representatives testified that traps were set over a 3-4-day span.

- [10] The Representatives testified that the professionals will not keep traps over the weekend and/or the winter months. The Representatives testified that in the spring months the professional will return and set new traps. The Representatives argued they did everything possible and that it is not reasonable to alter the Residential Property to attempt to enclose the Residential Property when it may not work.

Analysis

- [11] 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.

- [12] 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;*
 - and*
 - (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

- [13] The Officer concludes that the Landlord has not breached clause 28(1) of the *Act*. The Officer finds that the evidence suggests that the Landlord has taken reasonable steps to address the skunks nesting under the Residential Property. The Officer finds that the Landlords must rely on the expertise and professional opinions of the experts on how to trap, capture and/or remove the skunks.

- [14] The Officer accepts the Representatives' evidence that they have taken the appropriate steps and will continue to address the skunks nesting in the warmer months. Despite the Tenant's concerns regarding the skunks and any interactions with the Tenant and/or her dog, the Officer finds that the Tenant has access to another entrance to the Residential Property and may have to take caution when out with her dog until the skunks have been relocated. The Application is dismissed.

Conclusion

- [15] The Application is dismissed.

IT IS THEREFORE ORDERED THAT

- A. The Application is dismissed.

DATED at Charlottetown, Prince Edward Island, this 21st day of February, 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.