

Introduction

- [1] On January 16, 2024 the Tenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the "Application") dated January 12, 2024 with the Residential Tenancy Office (the "Rental Office"). On February 15, 2024, the Application was amended by the Tenant. The Application requests an order for reimbursement for emergency repairs, a determination that the Landlord contravened the Tenant's right(s), and a return of rent, pursuant to clauses 29(8) and 85(1)(b) of the *Residential Tenancy Act* (the "Act").
- [2] The Tenant is seeking reimbursement in the amount of \$500.00, and a return of rent in the amount of \$600.00.
- [3] All documents (including the Application, the *Notice of Hearing*, and the *Evidence Package*) were properly served pursuant to clause 100(1) of the *Act*.
- [4] On March 14, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Tenant, and the Landlord participated at the hearing.
- [5] The Landlord did not call in at the beginning of the hearing. The Rental Office called the Landlord, who responded that "he was not really prepared and that he forgot about it." The Rental Office provided the teleconference instructions, and after a few minutes passed, the Rental Office called the Landlord again. The Landlord stated he mistakenly took down the wrong number. The Rental Office provided the Landlord with the teleconference number and ID again. The Landlord called into the teleconference and the hearing proceeded.

Preliminary Matter – Adjournment Request

- [6] At the start of the hearing, the Officer asked the Landlord if he had an opportunity to review the evidence package (as the Tenant was the only party to submit documents into evidence). The Landlord told the Officer that he did not receive the evidence package, and further claimed to be unsure of what the Application was regarding. The Landlord requested an adjournment of the hearing.
- [7] The Officer confirmed with the Landlord the contact information on file at the Rental Office was correct. The Landlord claimed that he "did not have access to the e-mail" in question. The Landlord did not provide any further clarity to what was meant by not having "access", but provided the Officer with another e-mail address. The Officer re-sent the evidence package to the Landlord's new e-mail address. After several minutes passed, the Landlord still did not receive the evidence package.
- [8] The Tenant adamantly objected to the Landlord's request for an adjournment or any further delays. The Tenant questioned the Landlord's motives and argued that this was a delay tactic. The Tenant submitted that the dispute with the Landlord has gone on for a year, and that the Landlord is familiar with the Rental Office hearing process, as he has been present in past hearings with the Rental Office and the Island Regulatory and Appeals Commission (the "Commission"). Further, the Tenant submitted that the Landlord has responded in the past to e-mails from his previous e-mail, where the Landlord now claims to be inaccessible.

- [9] After weighing the arguments from the parties, and reviewing the contents of the evidence package, the Officer concluded that it was appropriate to proceed with the hearing. The Officer was satisfied that the Landlord was served with the Application electronically by the Tenant, the Rental Office served the *Notice of Hearing* by mail on February 26, 2024, and the *Evidence Package* was electronically available to the Landlord via *Titan file* on March 6, 2024. Further, the Landlord was an active participant in a previous Rental Office hearing, and Commission hearing. The Officer was satisfied with proceeding with the Application, as the Landlord was properly served all the documents, was familiar with the Rental Office proceeding, and was provided clarity at the hearing regarding the issues related to the Application.
- [10] Therefore, the Officer denied the Landlord's request to adjourn the hearing. The Officer proceeded to explain the issues in question on the Application. The Landlord acknowledged to the Officer that he understood the issues.
- [11] The Officer also permitted the Landlord to ask the Officer questions at any point during the hearing, regarding clarifying and/or describing any document in the evidence package.

Issues to be Decided

- i. Is the Tenant entitled to reimbursement for emergency repairs?
- ii. Did the Landlord contravene the Tenant's rights to quiet enjoyment, privacy and to repair and maintain the Rental Unit under the *Act*?
- iii. Is the Tenant entitled to a return of rent?

Summary of the Evidence

- [12] On August 20, 2017 the parties entered into an oral month-to-month tenancy agreement for the Rental Unit. The Rental Unit is situated in one half of an over-under duplex (the "Residential Property"). Rent is \$600.00, due on the first day of the month. No security deposit was required.
- [13] The Evidence Package includes 41 pages of documents submitted by the Tenant (including a copy of Order LR23-77 issued by the Commission dated December 13, 2023, an Account History from the Tenant's personal bank account, a copy of e-transfers sent by the Tenant dated April 3 and 28, 2023, and numerous photos of the Rental Unit).

Tenant's Evidence and Submissions

- [14] The Tenant testified that she is seeking a \$500.00 reimbursement for the Landlord breaking the Rental Unit's bathroom door, a bedroom door, the entry door, and another door referred to as the "pocket door." The Tenant testified that these doors were broken by the Landlord in February 2023. The Tenant admitted that the Landlord has fixed the "pocket door" as ordered by the Commission, however, the remaining three doors are not fixed. The Tenant testified that she was able to put the bathroom door back onto its hinges, but it is not properly fixed. The Tenant denied the Landlord's allegation (see below) that she denied the Landlord access to fix the broken doors.
- [15] The Tenant testified that the Landlord has unlawfully entered the Rental Unit, and that \$500.00 is a low estimate for damage. The Tenant testified that she is also seeking a \$600.00 return of rent. The Tenant testified that the Commission found in Order LR23-77 that she did not owe rent for the period of time that the emergency protection order was in place February 11, 2023 to May 12, 2023. The Tenant testified that on April 3, 2023 she e-transferred \$600.00 to the Landlord, and on April 28, 2023 she e-transferred \$700.00 to the Landlord for rent. The Tenant testified that she was not seeking the full amount of rent, just \$600.00.

[16] The Tenant read into the record paragraphs 22., 23., and 25. from Order LR23-77, which state:

22. *The Commission finds the Tenant's evidence to be more credible on these points. She conceded that she had not paid for two months – this admission against her interest enhances her credibility. However, the Tenant went on to provide direct testimony that the Landlord had forgiven rent for two months as a direct result of the EPO being in place. The Landlord's testimony on this point consisted of a brief denial of having any recollection of the conversation.*
23. *In the specific circumstances of this case, and in light of the Tenant's evidence explaining that she had not paid rent for two months because the Landlord had forgiven the outstanding rent payments, the Commission finds that the Tenant does not owe any amount to the Landlord for outstanding rent.*
25. *Finally, the Commission notes the following. The undisputed evidence is that for a significant period of time, commencing in January 2023 up until the date of the hearing before the Commission, there was no door separating the Tenant's unit from the Landlord's unit in the premises. Further, the Tenant testified and provided supporting (video or photographic) evidence to corroborate her testimony, that the Landlord entered her unit without her permission, and when he was less than fully clothed. This affected the Tenant's privacy, created a loss of enjoyment and was inappropriate given the circumstances. The Landlord was responsible for preserving the integrity and privacy of the unit. Landlords are not entitled to enter tenant's unit without following the provisions of the legislation and a failure to follow the requirements of the legislation is a serious infringement of a tenant's right to quiet enjoyment. As there is no Tenant application for a return of rent before us, the Commission declines to make such an award.*

Landlord's Evidence and Submissions

- [17] The Landlord did not submit any documents into evidence, and argued that he believed the proceeding was unfair.
- [18] The Landlord denied breaking the doors listed by the Tenant. The Landlord testified that he did fix the "pocket door" in December 2023. The Landlord testified that he attempted to fix the remaining doors, but the Tenant did not allow it.
- [19] The Landlord denied unlawfully entering the Rental Unit. The Landlord described a prior agreement between the parties that he was allowed to use the Rental Unit's bathroom and shower when his was not working. The Landlord stated that he would always text the Tenant before entering the Rental Unit. The Landlord made allegations that the Tenant broke into his rental unit and stole personal items from him. The Landlord argued that the Tenant owes March, April and May 2023 rent.

Analysis

- [20] The Application is made pursuant to clause 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 claims made. This means that the Tenant must provide the decision-maker with sufficiently clear, convincing and cogent evidence to prove her claim(s).

Issue i. Is the Tenant entitled to reimbursement for emergency repairs?

- [21] The Tenant is seeking reimbursement for emergency repairs pursuant to clauses 29(1), (4), (6), (7) and (8) of the *Act*. The Officer notes that clause 29 defines what is considered “emergency repairs”, and provides the required steps a tenant must take to complete such repairs. Further, on application to the Rental Office, the Tenant must prove that they followed the required steps in clause 29(4), and prove that the Tenant is entitled to reimbursement pursuant to clauses 29(6) and (7) of the *Act*.
- [22] On a review of the evidence and the testimony provided, the Officer finds that the Tenant has not established entitlement to reimbursement for emergency repairs. The Officer finds that the Tenant did not provide evidence that she had the doors repaired, and did not provide evidence to establish the cost associated with such repairs if they had been completed. This claim on the Application is denied.

Issue ii. Did the Landlord contravene the Tenant’s right to quiet enjoyment, privacy and to repair and maintain the Rental Unit under the Act?

- [23] The Tenant is seeking a finding that the Landlord contravened her rights to privacy, quiet enjoyment and to have the Rental Unit repaired and maintained. The relevant law is as follows:

22. Tenant’s right to quiet enjoyment

A tenant is entitled to quiet enjoyment of the rental unit including, but not limited to, the right to

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit, subject only to the landlord’s right to enter the rental unit in accordance with section 23; and*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

23. Landlord’s right to enter rental unit restricted

A landlord shall not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies...

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] The Officer finds that the Tenant has provided sufficient evidence to establish that the Landlord has contravened the Tenant’s rights to quiet enjoyment, privacy, and to repair and maintain the Rental Unit under the *Act*. The Officer comes to this conclusion by finding that the Tenant provided direct testimony, supported by photographic evidence. Further, the Tenant provided direct testimony which was consistent with the testimony summarized by the Commission in a previous decision, Order LR23-77. In Order LR23-77 the Commission made findings of fact, which assist in substantiating the Tenant’s testimony. The Officer finds that the Tenant is entitled to \$500.00 in compensation. The claim is allowed.

Issue iii. Is the Tenant entitled to a return of rent?

- [25] The Tenant is seeking a \$600.00 return of rent. The Officer finds that the Tenant has provided sufficient evidence to establish this claim. The Officer notes that the Tenant has provided bank statements and receipts of e-transfers to the Landlord (labelled "Babe") in the evidence.
- [26] On April 3, 2023 the Tenant e-transferred \$600.00 to the Landlord.
- [27] On April 28, 2023, the Tenant e-transferred \$700.00 to the Landlord.
- [28] The Officer notes that the Tenant is only seeking a \$600.00 return of rent. The Tenant stated that she is entitled to a higher amount as the Commission found she did not owe any rent for the two months in question (March and April 2023). However, the Tenant did not know what the \$700.00 payment was for, and is not seeking the return of this amount. The Officer concludes that the Tenant has established this claim and is entitled to a \$600.00 return of rent. The Officer notes that in Order LR23-77, paragraph 23. the Commission found that the Tenant "does not owe any amount to the Landlord for outstanding rent." The evidence establishes that the Tenant paid the Landlord rent in the amount of \$600.00 that was not owed. Therefore, the claim is allowed.

Conclusion

- [29] The Application is allowed, in part.
- [30] The Landlord shall pay the Tenant \$500.00 in compensation, and the Landlord shall return to the Tenant \$600 on or before April 17, 2024, in the total amount of \$1,100.00.
- [31] **Order LD24-110 will be served to the parties by e-mail.**

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenant \$1,100.00 on or before April 17, 2024.

DATED at Charlottetown, Prince Edward Island, this 27th day of March, 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.