

Introduction

- [1] On December 29, 2023 the Tenants filed a *Tenant Application to Determine Dispute (Form 2(A))* (the "Application") with the Residential Tenancy Office (the "Rental Office"). On January 16, 2024 the Tenants amended the Application. The Application requests a determination that the Landlords contravened the Tenants' rights, and a return of rent, pursuant to clauses 22, 28(1) and 85(1)(b) and (d) of the *Residential Tenancy Act* (the "Act").
- [2] The Tenants are seeking compensation and a return of rent in the amount of \$8,000.00.
- [3] The Landlords are seeking the Application be dismissed with costs awarded in the amount of \$3,000.00.
- [4] On March 7, 2024 at 1:00 p.m., a teleconference hearing was held before the Residential Tenancy Officer (the "Officer"). The Tenants participated, and the Landlords participated with legal representation at the hearing.
- [5] All documents (including the Application, the *Notice of Hearing* and the *Evidence Package*) were properly served pursuant to clause 100(1) of the *Act*. However, the Landlords have submitted that the Tenants did not comply with clause 76(2) of the *Act*, and, as a result, seek a dismissal of the Application.

Preliminary Matter – Service of the Application

- [6] The Officer notes that clauses 76(1), (2) and (3) of the *Act* states:

76. Starting proceedings

- (1) *An application to the Director for a hearing shall*
- (a) *be in the approved form; and*
 - (b) *include full particulars of the dispute that is to be the subject of the hearing.*

Service

- (2) *A person who makes an application to the Director shall give a copy of the application to the other party in accordance with section 100 **within five days of making the application.*** [emphasis added]

Failure to effect Service

- (3) *If, at any time, the Director is of the opinion that a party has not been provided notice in accordance with section 100, the Director may order that the party be given notice and an opportunity to be heard.*

- [7] The Landlords submit that the Application was filed by the Tenants on December 29, 2023, and that the Tenants did not serve them the Application until January 19, 2024. The Landlords submit that the Tenants have not complied with clause 76(2) of the *Act*. The Landlords request that the Application be dismissed as a result.
- [8] The Tenants submit that they filed the Application with the Rental Office on December 29, 2023 and were awaiting confirmation from the Rental Office before serving the Landlords. The Tenants were requested to amend the Application by the Rental Office, which the Tenants submitted they did on January 16, 2024. The Tenants submitted that on January 19, 2024 they served the Landlords the Application (amended) electronically.

- [9] The Officer notes that the undisputed evidence (see below) is that the tenancy ended on June 30, 2023. The Tenants had six (6) months from the end of the tenancy agreement to file the Application with the Rental Office. The Tenants did file the Application on December 29, 2023 to the Rental Office, effectively preserving their rights to file the Application. The Tenants requested a confirmation from the Rental Office that the Application was received before serving the Application to the Landlords.
- [10] Further, the Application was filed on a Friday before a holiday long weekend, which would have likely delayed any response to the Tenants, as they were requesting. The Officer does not see any legislative requirement which suggests that the Rental Office has a positive duty to confirm receipt of an application which would allow an applicant to delay serving the other party.
- [11] The Officer finds that clause 76(3) provides the Director the ability to allow a party, who may not have been served, be given notice and an opportunity to be heard. The Officer interprets this clause with a propulsive approach, which provides a party with an opportunity to be heard, despite failure and/or defects in service of the Application. In this case, the respondents (the Landlords) were aware of the Application, and given the Application, provided the Notice of Hearing, retained legal counsel, submitted evidence and written arguments, and fully participated in the hearing.
- [12] The Officer notes that rule 9. of the *Island Regulatory and Appeals Rules of Practice and Procedure* states:
- 9. Substance Prevailing Over Form**
No proceeding before the Commission shall be defeated or affected solely by any technical objection or by an objection based upon defects in form or procedure.
- [13] The Officer notes that hearings at the Rental Office level are not required to follow the Island Regulatory and Appeals Commission's rules of practice and procedures; however, such rules are informative and assist the Officer when reviewing the legislation and the propulsive approach of clause 76(3). Therefore, the Officer denies the Landlord's request to dismiss the Application. The Application will be determined on its merits.

Issues to be Decided

- i. Did the Landlords contravene the Tenants' rights to quiet enjoyment, and/or to repair and maintain the Rental Unit required under the *Act*?
- ii. Are the Tenants entitled to a return of rent?

Summary of the Evidence

- [14] In July 2022 the parties entered into a written fixed-term tenancy agreement for the Rental Unit. The fixed-term was from September 1, 2022 to June 30, 2023. Rent was \$1,800.00 due on the first day of the month. A security deposit of \$1,800.00 was required and paid. The Tenants vacated and the tenancy ended on June 30, 2023.
- [15] The *Evidence Package* includes 127 pages of documents submitted by the parties. The Tenants submitted videos into evidence. The Tenants submitted time-stamped photos after the hearing, the photos were already in the evidence package, but included time stamps. The Landlords submitted additional documents into evidence.

Tenants' Evidence and Submissions

- [16] The Tenants submitted that they moved into the Rental Unit at the end of August 2022, and that it was not in a clean state. The Tenants testified that on October 3, 2022 they messaged the Landlords about an issue with rats living under/in the Rental Unit. The Tenants submitted that there was a hole in the boiler room, which was the source of entry. The Tenants testified that they followed up with the Landlords on October 8, 2022.
- [17] The Tenants testified that it took the Landlords a week before contacting any pest control company. The Tenants submitted that the hole in the boiler room was never fixed, and left with only a piece of wood over it. Numerous photos, and messages between the parties were submitted into evidence.
- [18] The Tenants testified that in February 2023 there were water issues and a leak in the pipes. The Tenants submitted that the heat was not properly working and caused the water to freeze. The Tenants submitted that the Landlords did not fulfil their duty to repair and maintain the Rental Unit as required by the *Act*, and did not comply with the duties under the *Public Health Act Rental Accommodations Regulations*.
- [19] The Tenants submitted that on May 22, 2023 the water for the Rental Unit was shut off. The Tenants submitted that the colour of the water was changing, and that it was determined to be an issue with the well. The Tenants submitted that a plumber looked at the issue, water tests were completed and the Tenants had a conversation via e-mail with the Department of Environment, Energy and Climate Action on June 22, 2023. The Tenants submitted that the water was dangerous to consume, and wanted bottled water. The Tenants submitted that they stopped drinking the water on June 22, 2023. The Tenants submitted that the Landlords provided access to their hose for water sources.
- [20] A water quality test report was submitted into evidence dated June 26, 2023.
- [21] The Tenants submitted that \$8,000.00 in returned rent is fair. The Tenants submitted that \$1,800.00 per month for rent multiplied by 5 months is \$9,000.00. The Tenants submitted that they are seeking below that amount, and that issues have been ongoing with the Rental Unit.

Landlords' Evidence and Submissions

- [22] The Landlords had two witnesses provide testimony at the hearing. The first witness ("A.L.") testified that she was a former tenant of the Landlords. A.L. referred to her written submission, submitted into evidence. The submissions summarized her relationship with her former Landlords being positive.

- [23] The second witness (“M.L.T.”) referred to her written submission, submitted into evidence. M.L.T. testified that the Landlords are reliable and put best efforts forward to address any concerns with their tenants. M.L.T. testified that the Landlords reached out to her regarding plumbers and trying to resolve the issues with the Tenants. M.L.T. testified that it is very hard to find professionals and to get issues resolved quickly.
- [24] The Landlords provided written submissions into evidence. The Landlords submitted that some of the named issues by the Tenants took time to resolve. The Landlords submitted that numerous professionals were called about the water/well issue. The Landlords submitted that any issues brought forward by the Tenants were addressed within a couple days, and whenever the professional was available.
- [25] The Landlords submitted that the frozen pipes in February 2023 was addressed immediately and that the hole in the boiler room was fixed on February 8, 2023. The Landlords submitted that they have acted as reasonable landlords and have fulfilled their obligations under the *Act*.
- [26] The Landlords submitted that they attended to every issue, and often would go to the Rental Unit to inspect and/or address the issue(s) raised by the Tenants. The Landlords submitted that if there were delays, it was often due to lack of available professionals, and/or awaiting shipping for specific items. The Landlords argue the compensation requested by the Tenants is unreasonable, and that the Application should be dismissed with costs in the amount of \$3,000.00.

Analysis

- [27] The Application is made in accordance with clause 75 of the *Act*. The Tenants initiated the Application, and bears the onus of proving their claim on the civil standard, a balance of probabilities. The courts have interpreted this standard to mean that a decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim and the value of the alleged damages.

Issue i. Did the Landlords contravene the Tenants’ rights to quiet enjoyment, and/or failed to repair and maintain the Rental Unit required under the *Act*?

- [28] The Tenants are seeking a determination that the Landlords have contravened their rights to quiet enjoyment, and have failed to repair and maintain the Rental Unit. 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.*

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.*

[29] Further, clauses 8.1 and 9 of the *Public Health Act Rental Accommodation Regulations* state:

8.1 Potable water

The owner of a dwelling unit, housekeeping unit, apartment or other rental accommodation to which these regulations apply shall provide hot and cold running potable water under adequate pressure in all kitchen and bathroom facilities in the dwelling unit, housekeeping unit, apartment or other rental accommodation.

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, silverfish, weevils, flies, rats, mice and any or all other pests.

[30] The Officer finds that the Tenants have failed to establish their claim that the Landlords contravened their rights under the *Act*. The Officer finds that the Tenants' evidence (documentary, video and testimonial) establish that there were issues in the Rental Unit throughout the tenancy. The evidence establishes that the Rental Unit had an infestation and/or problem with rats, likely caused by structural exposure to the outside, leaking/frozen pipes, some maintenance and repair issues, and a water quality issue from the well.

[31] However, the Tenants' evidence fails to establish that the Landlords ignored, and/or failed to take reasonable steps to repair, maintain and/or fix the issues as they occurred. The Landlords' evidence, namely the testimonial evidence, witness testimony and the documentary evidence establishes that the Landlords did indeed take, what the Officer would find to be reasonable steps to address the issues as they occurred.

[32] The Officer notes that there may have been delays, and even times where the Tenants felt the issue(s) were not addressed quickly enough. However, the Landlords provided sufficient evidence to establish that the named delays were outside of their control, and were awaiting availability of professionals, contractors, and/or replacement parts. The Officer finds that the Landlords cannot be held responsible for such delays and when work could be completed by the Landlords themselves, the evidence suggests that the Landlords arrived at the Rental Unit to complete the work.

Issue ii. Are the Tenants entitled to a return of rent?

[33] The Officer has determined that the Tenants have failed to establish their claim that the Landlords contravened their rights under the *Act*. Therefore, the Officer concludes that the Tenants have not established a valid claim for a return of rent. The Application is dismissed.

Costs

[34] The Landlords are requesting partial indemnity costs in the amount of \$3,000.00 in accordance to clause 85(1)(q). The Officer has heard the submissions from the parties as it relates to costs. The Officer finds that costs should not be awarded in this case.

Conclusion

[35] The Application is dismissed without costs.

IT IS THEREFORE ORDERED THAT

A. The Application is dismissed without costs.

DATED at Charlottetown, Prince Edward Island, this 5th day of April, 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.