

Introduction

- [1] On March 26, 2024, the Tenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the "Application") with the Residential Tenancy Office (the "Rental Office") pursuant to the *Residential Tenancy Act* (the "Act").
- [2] The Tenant is seeking compensation for failure to provide a right of first refusal and to request compensation for the Landlord failing to repair or maintain the Rental Unit.
- [3] On May 16, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, the Tenant's legal counsel, and two Landlord representatives (the "Representatives") participated in the hearing.
- [4] At the beginning of the hearing, the Tenant stated he was no longer requesting compensation for a failure to provide a right of first refusal. The Tenant stated he was seeking a determination that the Landlord failed to repair or maintain the Rental Unit and compensation in the amount of 33% of rent from January 1, 2023, to April 1, 2024, totaling \$3,131.04.

Issue to be Decided

Did the Landlord fail to maintain the Rental Unit and is the Tenant entitled to compensation?

Summary of the Evidence

- [5] On October 1, 2018, the parties entered into written, month-to-month tenancy agreement. The Rental Unit is an apartment situated in a six-unit building (the "Residential Property"). Rent is \$593.00 due on the first day of the month. A security deposit of \$273.00 was paid.

Tenant's Evidence and Submissions

- [6] The Tenant submitted 31 documents into evidence including messages between the parties, a report from Environmental Health, photos of the Rental Unit, and three videos of the Rental Unit. The Tenant stated he has been subletting the Rental Unit since December 2021 and he has not lived in the Rental Unit since that time. He stated he was requesting the compensation on behalf of the sub-tenant.
- [7] The Tenant stated the roof of the Residential Property was damaged due to Hurricane Fiona in September of 2022. In January 2023, the Tenant stated he notified the Landlord there was water leaking from the roof into the Rental Unit. He stated the Landlord provided some buckets to catch the leaking water but did not do anything further to fix the leak.
- [8] The Tenant stated the sub-tenant was not able to fully enjoy the use of the kitchen as there was water leaking, buckets on the floor, and mold formed as a result of the leaking water. He stated the submitted letter from Environmental Health, dated March 8, 2024, confirms the leaks and the presence of mold. The Tenant stated that because the Landlord was planning on demolishing the Residential Property even before the roof was damaged, he believes the Landlord chose not to repair or replace the roof because of the cost which would be incurred.
- [9] The Tenant stated the parties had an email exchange in January 2023 about moving the sub-tenant to another unit in the building but that did not happen. He stated it was not until March 2024, when the letter from Environmental Health was received, that the Tenant/sub-tenant was offered another unit. The sub-tenant moved out of the Rental Unit and secured housing elsewhere. The Tenant then moved into the different unit.

Landlord's Evidence and Submissions

- [10] The Representatives submitted a written statement into evidence. They stated the Residential Property was going to be demolished at some point to build new housing but the damage to the roof from Hurricane Fiona has sped up the time frame for the demolition. They stated it was hard to source contractors after Hurricane Fiona because most of the contractors were all busy. They stated the Tenant was offered another unit in March 2024
- [11] The Representatives stated they put a tarp on the roof to mitigate any damages until the roof could be properly assessed. The tarp eventually failed and they continued to try to get contractors to assess and temporarily repair the roof. During this time the Representatives were also assessing the damage to the units in the building to see if it would be worth repairing the roof and the units. In March 2024, in consultation with a roofing company, the Representatives concluded the roof would have to be completely rebuilt and it was not worth the cost, as the building was going to be demolished.
- [12] The Representatives stated the Tenant was served with an eviction notice for demolition on February 28, 2024, effective August 31, 2024. They stated they met their requirements under the Act by repairing what they could and it was not their fault they had to wait for contractors to assess the roof repairs.

Director's Evidence

- [13] The Director submitted into evidence a copy of the same Environmental Health letter that was submitted by the Tenant. The Director also submitted a copy of the Island Regulatory and Appeals Commission (the "Commission") Order LR24-03.

Post Hearing Evidence and Submissions

- [14] After the hearing the Landlord submitted into evidence a copy of an eviction notice (Form 4(B)), (the "Notice"), dated February 28, 2024, effective August 31, 2024, stating the Landlord was going to demolish the Residential Property. The Landlord also submitted a copy of a municipal demolition permit from December 2023 and an email from Ashe Roofing dated March 7, 2024, stating the roof was not safe to walk on. Copies of the documents were sent to the Tenant and he was asked to reply with any submissions by May 21, 2024. No further submissions were received from either party.

Analysis

- [15] The Tenant initiated the Application and bears the onus of proving his claim on a balance of probabilities. This means that the decision-maker must be satisfied there is sufficiently clear and convincing evidence to support the claim(s) and the value of the alleged damage(s). The relevant law is as follows

85.(1) Powers of the Director

After hearing an application, the Director may make an order

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the tenancy agreement.

28.(1) Obligation to repair and maintain

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.

Clause 9.(a) of the *Public Health Act Rental Accommodation Regulations* (the "Regulations") 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.

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- [16] The Representatives stated they had contacted different tradespersons when they were made aware of the roof damage but it was difficult to source contractors as everyone was busy after Hurricane Fiona. The Representatives stated they attempted to mitigate the damages by tarping the roof until the roof could be fully assessed. When it was determined the roof could not be sufficiently repaired without being fully replaced, the Tenant was offered another rental unit, which he accepted.
- [17] The letter from Environmental Health states the Landlord notified Environmental Health that there were multiple assessments completed by roofing companies and the roof was found to be beyond repair. Temporary repairs, such as tarping, were attempted but water infiltration could not be stopped. Correspondence from Ashe Roofing was provided to Environmental Health from the Landlord which confirmed the mitigation efforts and condition of the roof. Environmental Health did not indicate there was mold in the Rental Unit and recommended the Landlord mitigate the leaking to prevent mold growth.
- [18] In Order LR23-24, the Commission stated:

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 everyday. Noting 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. The Premises are an older building and the evidence suggests that the Tenant and her co-occupants lived in the Premises continuously while the work was being done.

[19] The Officer finds that any delays that may have occurred with the roof repairs were outside of the Landlord's control. Due to the high volume of properties which required repairs after Hurricane Fiona, tradespersons were difficult to source, which the Commission has noted. The evidence establishes that the Landlord had taken appropriate steps to attempt to mitigate the damages with the resources they had available. When they determined the roof could not be repaired, the Tenant was offered another rental unit. The Officer finds that the Tenant has not established his claim that the Landlord failed to comply with their obligations under the *Act* or the *Regulations*. Therefore, the Tenant is not entitled to compensation and the Application is denied.

Conclusion

[20] The Application is denied.

[21] This Order will be sent to the parties by email.

IT IS THEREFORE ORDERED THAT

A. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 11th day of June, 2024.

(sgd.) Mitchell King

Mitchell King
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals 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.