

INTRODUCTION

- [1] On May 9, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking a monetary order against the Landlord based upon the condition of the Unit and inadequate services. The Tenant seeks a return of rent and rent reduction commencing December of 2023.
- [2] On May 16, 2024 the Rental Office mailed and emailed the parties notice of a hearing scheduled for 9:00 a.m. on June 27, 2024.
- [3] On May 30, 2024 the Rental Office mailed and emailed the parties notice of a hearing rescheduled for 9:00 a.m. on July 16, 2024.
- [4] On July 5, 2024 the Rental Office emailed the parties an evidence package.
- [5] On July 16, 2024 at 9:00 a.m. the Tenant and the Landlords participated in a hearing before the Residential Tenancy Officer (the "Officer") for determination of the Application. The parties provided additional documentary evidence at the hearing.

ISSUES

- i. Must the Landlords pay compensation to the Tenant due to the condition of the Unit and inadequate services?
- ii. Should the Unit's rent be reduced until the Landlords address the issues with the condition of the Unit and the inadequate services?

SUMMARY OF EVIDENCE

- [6] The Unit is a three-bedroom, one-bathroom mobile home that the Landlords have owned since July of 2015. The Landlords rent the land upon which the mobile home is placed from the brother of one of the Landlords.
- [7] In February of 2017 the Landlords, the Tenant and another tenant entered into a written, month-to-month tenancy agreement for the Unit. Rent in the amount of \$392.68 was due on the first day of the month. A security deposit was not required.
- [8] On May 21, 2019 the Landlords and only the Tenant entered into a written tenancy agreement. As of January 1, 2024 the monthly rent was increased to \$404.68. The Unit is occupied by the Tenant, three children, two dogs and two cats.
- [9] The Landlords and the Tenant were parties to two earlier Rental Office decisions, Order LD23-502 and LD24-012, and one earlier Island Regulatory and Appeals Commission (the "Commission") decision, Order LR24-17. There is an Environmental Health report dated December 8, 2024 that was issued to the Landlords (the "Environmental Health Report" or the "Report").

Tenant's Evidence and Submissions

- [10] The Tenant's evidence is summarized as follows.
- [11] The Tenant seeks a monetary order reimbursing the Tenant's out of pocket water and laundry expenses. The Tenant is also seeking a return of rent for six months before the Application was filed and a rent reduction onwards, up to the amount the Landlords pay to rent the land upon which the mobile home is placed.

- [12] The Unit's water is not drinkable and the Landlords stopped bringing the Tenant water. The Landlords only shocked the water on one occasion, right before the May 19, 2023 sample. There have been no water samples taken for the Unit in 2024. The Tenant submitted a duplicated Atlantic Superstore invoice for a water expense of \$30.79 on June 23, 2024. The Tenant has incurred water costs in the amount of \$1,658.36 for the period of October 19, 2023 to July 13, 2024. The Tenant and her children were in Florida from March 10 to 14, 2024.
- [13] The washing machine was included in the Unit since February of 2017, when the Tenant first moved in. The washing machine worked until 2023. There was an earlier Rental Office decision (Order LD23-502) awarding some compensation regarding the washing machine. The Tenant has incurred additional expenses since this previous decision because the washing machine problem has not been addressed by the Landlords.
- [14] From March 20, 2024 the Tenant was loaned a washer by a family member and the Tenant did not incur laundry costs for about two months. The loaned washer broke and the Tenant continued to pay for laundromat services. The Tenant provided a spread sheet showing a total laundry cost of \$884.00 from October 2023 to the hearing date. In the Application the Tenant made a claim for the cost of removing the washer, however, it ended up being removed without charge.
- [15] In February of 2024 the storm door blew off and the hinges were stripped. The Tenant took the door inside the Unit and emailed the Landlords advising of the problem. The Landlords came by and saw that the storm door was removed.
- [16] Every time it rains water leaks into the Unit around the main, front door. On May 17, 2024 the Landlords installed a metal strip with a rubber piece but this did not fix the water problem. The Tenant submitted into evidence photographs taken by the Tenant on May 18, 2024 from outside and inside the Unit. The photographs from inside the Unit showing gaps around the door. The Tenant stated that some of the photographs show light coming inside the Unit from the spaces around the closed door. The Tenant had a metal strip put along the bottom of the door to try and prevent water from coming in but it did not work. On June 26, 2024 the Tenant emailed the Landlords advising that the water problems have continued and the Landlords responded that they would look into weather stripping. On July 8, 2024 the Landlords installed weather stripping around the door but the materials started to detach the same day. On July 11, 2024 the Tenant emailed the Landlords again to advise that the door was still leaking and the problem has still not been addressed.
- [17] The Tenant stated that there have been mouse and rats at the Unit. On May 4, 2024 the Tenant emailed the Landlords advising that there were mice in the Unit again. The Landlords replied later the same day stating they were surprised there was a mouse problem because this type of issue would normally occur in the Fall. The Landlords suggested that the Tenant's cat and a previously supplied mouse chaser unit should have addressed any problem. The Landlords stated that they would drop off mouse traps and check the Unit's skirting. The Landlords later dropped off two traps. The Tenant purchased additional mouse traps. The Tenant submits that, if the Landlords had complied with the Environmental Health Report, then the mice would not have been a problem.
- [18] The Tenant stated that when she first moved into the Unit the master bedroom windows were supposed to be replaced. The master bedroom windows still do not open.
- [19] Environmental Health has only inspected the Unit on one occasion, November 30, 2023. The Unit was not condemned by Environmental Health.
- [20] The Tenant submits that the things ordered in the Environmental Health Report, Order LD23-502 and Order LR24-17 should have been addressed by the Landlords. The Tenant stated that, with regard to the Report, on April 23, 2024 the Tenant emailed Environmental Health. The Tenant received a response from an officer the same day advising that the Landlords had not requested an extension to address the issues in the Report.

[21] The Tenant provided evidence responding to the comments in the Landlords' documentary evidence.

Landlords' Evidence and Submissions

[22] The Landlords' evidence is summarized as follows.

[23] The Landlords purchased the mobile home in July of 2015. The Landlords spent \$9,000.00 from July to November of 2015 improving the home.

[24] The Landlords stated that the Unit's water was shocked once. The Unit's last water test was completed in September or October of 2023 and the results were up and down. The Landlords looked into getting a cheap UV light but the Landlords have been advised by people that it would not fix the problem. The cost of a good UV light would be about \$1,500.00, which the Landlords cannot afford. The Landlords expect that well drilling would also cost about \$1,500.00.

[25] The Tenant had a trip to Florida and the Landlords should not be responsible for the cost of water during that time. The Landlords question whether the amount of water purchased by the Tenant is reasonable.

[26] After Order LR24-17 was issued, the Landlords emailed the Commission. The Landlords submitted into evidence correspondence from Commission staff which states that the Commission upheld the Order from the Director and did not award any additional compensation. The Landlords submit that, if the Commission did not award further compensation for water and washing machine expenses on appeal, then the Officer should not be issuing further compensation.

[27] The Landlords stated that they did look for a washing machine but then stopped searching after they received "*all the criticism*" from the Tenant.

[28] The Landlords questioned how many more times the Tenant can apply to the Rental Office.

[29] With regard to the Unit's door, the Landlords spoke to people working at two hardware stores in Montague. There was difficulty with the door sweep because if it is installed too far down it will interfere with the opening and closing of the door. The Landlords installed weather stripping but it fell off. The Landlords purchased more weather stripping and installed it.

[30] The Landlords stated that mice and ants look for food. The Landlords provided the Tenant with a mouse chaser unit but it was returned by the Tenant with a box of curtains. It appears to the Landlords that the mouse chaser unit had not been opened.

[31] The Landlords stated that the Environmental Health Report states that the inspection was completed per a Commission order, which is incorrect. The Landlords were not present when the inspection was completed because they were not given notice of the inspection. The Landlords submitted into evidence an email to Environmental Health sent on December 14, 2023. The Landlords stated that they did not receive a response to the email.

[32] The Landlords dispute the Environmental Health Report requirement that the ceiling fan be repaired or replaced because it never worked to begin with. The Landlords submitted a publication regarding the "*Public Health Act Rental Accommodation Regulations*" titled "Preparing a Unit for the Rental Market." This document states that a bathroom must be ventilated by at least one manner from a five item list. The Landlords stated that they are already in compliance regarding the bathroom because there is a window opening directly to outside air. The Landlords questioned parts of the Report regarding egress concerns.

- [33] The Landlords referred to subsection 19(1) of the *Act* and submitted that the Tenant should not be seeking a return of rent. The Tenant gets the site rental that is paid by the Landlords, space for two vehicles, room for a swing set, lawn space and the mobile home.
- [34] The annual rent for the Unit is \$4,856.16. The Landlords pay \$143.75 per month, including HST, to rent the land upon which the mobile home is located, for an annual amount of \$1,725.00. The balance remaining after paying the land rent is \$3,131.16. The Landlords incurred a \$460.00 charge for pumping the Unit's septic tank and a tippage fee and provided an invoice dated June 24, 2024 regarding the charge. The Landlords submit that they are caught in a bind by the rent increase rules which prevent them from completing a large rent increase to cover their expenses. There is not enough money coming in for the Landlords to afford the Unit.
- [35] The Landlords stated that they are attempting to sell the Unit, however, it is more difficult to sell while occupied by the Tenant.
- [36] The Landlords submit that, if the Tenant is unhappy, then the Tenant can move out. The Landlords provided evidence of rental listings regarding other properties that the Tenant could rent.
- [37] The Landlords stated that they feel like they are being punished and are getting no help. The Landlords submit that the Officer should consider the Landlords' situation and "*not just look at the book.*"

ANALYSIS

- [38] The evidence establishes that the Landlords are in serious non-compliance with the rental laws of Prince Edward Island.
- [39] For the reasons below, the Officer finds that the Tenant has established claims for reimbursement, a return of rent and a rent reduction.

Claims in the Application

- [40] The Tenant's claims are based upon section 28 of the *Act*, which states in part as follows:
- (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.
- (2) For greater certainty, subsection (1) applies despite the tenant's knowledge of the state of repair of the residential property prior to entering into the tenancy agreement.*
- [41] The Tenant's monetary claims in the Application are based upon different clauses in subsection 85(1).
- [42] The Tenant's reimbursement for out of pocket expenses related to potable water and the washing machine is based primarily upon clause 85(1)(d), which states:
- 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;*

- [43] The Tenant's claims for a return of rent and a rent reduction are based primarily upon clauses 85(1)(e) and (i), which state:

After hearing an application, the Director may make an order

(e) directing that past or future rent shall be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

(i) directing a landlord to pay to a tenant an amount as compensation for inconvenience as a result of a contravention of this Act or the tenancy agreement, and authorizing the tenant to offset that amount against future rent;

Water Expense Reimbursement

- [44] The Tenant's previous claim for water expense reimbursement was allowed in Order LD23-502, which provides the legal basis for the Tenant's claim. As noted in this earlier decision, the Landlords were responsible for providing the Unit with potable water as set out in section 8.1 of the *Public Health Act Rental Accommodation Regulations*.
- [45] The evidence establishes that, since Order LD23-502 was issued, the Landlords still have not addressed the water quality issue at the Unit. As a result, the Tenant has been purchasing water out of pocket.
- [46] The Landlords questioned whether the Tenant was claiming for water expenses while in Florida. The Tenant's evidence is that she was in Florida from March 10 to 14, 2024. The Tenant has not claimed for water purchases made during this period. The Landlords have not established that the Tenant has claimed for water expenses incurred while the Tenant was in Florida.
- [47] The Tenant provided a spreadsheet of the Tenant's water expenses supported by receipts. The Officer is satisfied that the Tenant has incurred water expenses in the amount of \$1,658.36 because the Landlord has not provided potable water. The Officer is satisfied that the water purchases are reasonable. Although the Landlords questioned the volume of water purchases, the Landlords provided insufficient evidence to support what they perceive to be the appropriate volume of water usage for the timeframe that they have not provided potable water.
- [48] The Landlords' inability to afford the cost of providing potable water to the Unit is not a valid defence against the Tenant's claims for compensation.
- [49] Although Commission Order LR24-17 did not award additional compensation to the Tenant, this appeal decision was made in the context of only the Landlords challenging Order LD23-502 and the Landlords already having paid the monetary order component of Order LD23-502.
- [50] The Officer has reviewed Order LR24-17 and the Landlords' correspondence with Commission staff after the hearing. Order LR24-17 does not prohibit the Tenant from making further claims for compensation regarding water and the washing machine. The correspondence with Commission staff summarized part of the decision. There is no reasonable inference that could be drawn from Order LR24-17 and the Landlords' correspondence with Commission staff that the Tenant was barred from making further compensation claims with the Rental Office.
- [51] The Landlords must pay the Tenant \$1,658.36 for expenses incurred by the Tenant caused by the Landlords' failure to provide the Unit with potable water for the period of October 19, 2023 to July 13, 2024.
- [52] The Landlords must also reimburse the Tenant for the Tenant's further water expenses until the Landlords ensure that the Unit's water is potable.

Washing Machine Reimbursement

- [53] The Tenant's previous claim for washing machine reimbursement was allowed in Order LD23-502, which provides the legal basis for the Tenant's claim. The evidence establishes an ongoing breach of the requirement of the Landlords to repair or replace the Unit's washing machine.
- [54] The Officer is satisfied that the Tenant has incurred additional expenses of \$884.00 from October 2023 to mid-July 2024 due to the absence of a properly functioning washing machine in the Unit.
- [55] The Landlords must also reimburse the Tenant for the Tenant's further laundry expenses until the Landlords have a properly functioning washing machine installed in the Unit.

Environmental Health Report

- [56] During the hearing the Landlords disputed parts of the Environmental Health Report.
- [57] However, it appears to the Officer that the Landlords are attempting to re-argue matters that have already been determined.
- [58] The evidence establishes that the Landlords have not addressed the issues identified in the Report. Although the Landlords have made their own attempts to fix one aspect of the Report regarding the Unit's door, the evidence establishes that door problems remain, particularly rain water entering the Unit.
- [59] The Officer notes that Order LD23-502, issued on November 2, 2023, ordered in part:
- B. The Landlords shall request Environmental Health do an onsite inspection of the Residential Property to ensure health, safety and housing compliance.*
 - i. The Landlords shall follow the instructions of Environmental Health.*
 - C. The Landlords shall take every reasonable step to ensure that the quality and safety of the water for the Residential Property is met forthwith."*
- [60] Commission Order LR24-17 was issued on April 19, 2024 and confirmed Order LD23-502.
- [61] The Commission stated as follows in paragraphs 12 to 14 of their decision:

"The December 8, 2023 letter from Dwayne Collins, CPHI(C), Environmental Health Officer, Department of Health and Wellness (the "Environmental Health Report"), sets out observations, requirements and recommendations and then states:

The above requirements must be actioned within 10 business days of the date of this letter. All the above issues are to be completed within 20 business days of this letter. If you are unable to comply with this time frame, you must contact the undersigned to request an extension for work to be completed.

The Environmental Health Report also references and quotes the sections of the Public Health Act Rental Accommodation Regulations requiring an owner of a dwelling to take action.

The Commission finds that the Premises require major repairs for matters of health and safety and neither the Landlords' inability to afford these necessary repairs nor the fact that the premises have been listed for sale are reasons to reverse Order LD23-502. In addition,

the Commission wishes to point out that the Environmental Health Report has its own line of authority, independent of Order LD23-502.”

- [62] There is no evidence before the Officer that Environmental Health has reduced or amended any of the Landlords' requirements provided in the Report.
- [63] The effect of Orders LD23-502 and Order LR24-17 was that the Landlords were required to comply with the Environmental Health Report.
- [64] It appears to the Officer that the Landlords must still comply with the Report, as previously determined by the Rental Office and the Commission.

Return of Rent and Rent Reduction

- [65] The Officer acknowledges that the Tenant has continued to occupy the Unit and derived some benefits from the tenancy agreement.
- [66] However, it appears to the Officer that the value of the tenancy agreement has been reduced and the Tenant has been inconvenienced due to the condition of the Unit and inadequate services. As noted by the Officer above, these are different bases for compensation in addition to the Tenant's out of pocket expenses.
- [67] The provision of potable water to a rental unit is of critical importance to a tenancy agreement. In the context of a \$404.68 monthly rent, the Officer finds that a \$100.00 per month return of rent and rent reduction is appropriate from December 2023 to the date the Landlords ensure that potable water is provided to the Unit. This amounts to \$900.00 from December 2023 to August 2024 (9 months multiplied by \$100.00). This compensation is in addition to the Tenant's out of pocket water expenses.
- [68] The absence of a properly operating washing machine, while still important, does not have the same cruciality as potable water. The Officer finds that an additional \$20.00 per month return of rent and rent reduction is appropriate from December 2023 to the date the Landlords ensure that a properly functioning washing machine is installed in the Unit.
- [69] For this claim there is a \$40.00 reduction as the Tenant was able to use another washing machine for approximately two months. The Landlords must pay the Tenant \$140.00 for this return of rent (9 months multiplied by \$20.00 per month for December 2023 to August 2024, minus two months (\$40.00)).
- [70] As noted in Order LR24-17, the Unit requires major repairs for matters of health and safety. The extent of the problems identified in the Environmental Health Report support a return of rent and rent reduction on the same level as the potable water issue, in the additional monthly amount of \$100.00.
- [71] The Environmental Health Report was issued on December 8, 2023 and required that all the issues would be completed within 20 business days. As a result, the Officer allows this claim from mid-January 2024 onwards, until the Landlords are in compliance with the Report. The Landlords must pay the Tenant \$750.00 for the period of mid-January 2024 to August 2024 (January 2024 - \$50.00; 7 months multiplied by \$100.00 per month for February 2024 to August 2024).
- [72] As of September 1, 2024, the Unit's monthly rent is reduced as follows:
- A reduction of \$100.00 per month until the Landlords ensure the Unit has potable water;

- A reduction of \$20.00 per month until the Landlords install a properly functioning washing machine in the Unit; and
- A reduction of \$100.00 per month until the Landlords fully comply with the Environmental Health Report.

[73] If the Landlords do not fix any of these three issues, above, then the monthly rent will be reduced to \$184.68 (\$404.68 minus \$100.00 minus \$20.00 minus \$100.00).

CONCLUSION

[74] The Landlords must pay the Tenant \$4,332.36 by the timeline below, calculated as follows:

Item	Amount
Potable Water Reimbursement (19 OCT 2023 – 13 JUL 2024)	\$1,658.36
Potable Water Return of Rent (DEC 2023 – AUG 2024)	\$900.00
Washing Machine Reimbursement (OCT 2023 – Mid-JUL 2024)	\$884.00
Washing Machine Return of Rent (7 months, up to AUG 2024)	\$140.00
Environmental Health Report Non-Compliance Return of Rent (Mid-JAN 2024 to AUG 2024)	\$750.00
Total	\$4,332.36

[75] The Landlords will further reimburse the Tenant for additional water and washing machine expenses as stated below.

[76] The monthly rent for the Unit is adjusted on the terms stated below.

IT IS THEREFORE ORDERED THAT

1. The Landlords must pay the Tenant \$4,332.36 by November 1, 2024.
2. The Landlords must reimburse the Tenant for further water expenses caused by the lack of potable water in the Unit until the Landlords ensure the water is potable.
3. The Landlords must reimburse the Tenant for further laundry expenses caused by the absence of a properly functioning washing machine installed in the Unit until the Landlords have installed a properly operating washing machine.
4. As of September 1, 2024, the Unit’s monthly rent is reduced as follows:
 - A reduction of \$100.00 per month until the Landlords ensure the Unit has potable water;
 - A reduction of \$20.00 per month until the Landlords install a properly functioning washing machine in the Unit; and
 - A reduction of \$100.00 per month until the Landlords fully comply with the Environmental Health Report.

DATED at Charlottetown, Prince Edward Island, this 15th day of August, 2024.

(sgd.) Andrew Cudmore

 Andrew Cudmore
 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.