

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On July 2, 2024 the Tenants filed an amended *Form 2 (A) Tenant Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking repairs and a monetary order for compensation in the amount of \$2,550.00. The Application was emailed to the Landlord.
- [3] On July 18, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing along with a copy of the Application.
- [4] On August 6, 2024 the Rental Office emailed the parties the evidence package.
- [5] On August 15, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). One of the Tenants (the “Tenant”) and the representative for the Landlord (the “Representative”) participated at the hearing.

ISSUES

- i. Must the Landlord repair the Rental Unit?
- ii. Are the Tenants entitled to compensation?

SUMMARY OF EVIDENCE

- [6] The Rental Unit is situated in a 4-bedroom, 2-bathroom over/under duplex. The Landlord is the property management company hired by the property owner.
- [7] On December 1, 2022 the parties entered into a written fixed-term tenancy agreement for occupancy of the Rental Unit. Upon the fixed-term’s expiry, the tenancy continued as a month-to-month agreement. Rent is \$2,466.85 due on the first day of the month. In October 2022, a \$2,395.00 security deposit was paid.

TENANTS’ EVIDENCE AND SUBMISSIONS

- [8] The Tenants submitted 39-pages of documents into evidence including: Environmental Health Report (the “Report”), advertisements, emails, maintenance requests, photographs, Maritime Electric bills, and the cost for electrical consumption.
- [9] The Tenant stated that for two winters the Rental Unit has had issues with the temperature. The Rental Unit does not retain heat or cooling. The Tenant stated that he requested the Landlord look into the issue on numerous occasions. The Tenant stated that these requests were made through the Landlord’s internal portal, email and verbally.
- [10] The Tenant stated that the issue with the temperature is due to the windows. The Tenant stated that in the advertisement for the Rental Unit, it was said that new windows and renovations would be completed.
- [11] In December 2022 three windows were replaced. The Tenant stated that there are 11 total windows in the Rental Unit, and 7 windows are needed to be repaired/replaced.
- [12] The Tenant stated that the Landlord has ignored his requests to have the 7 windows repaired/replaced. The Tenant contacted Environmental Health and they inspected the Rental Unit on January 31, 2024. The Report was issued on February 5, 2024 and ordered the Landlord to replace or repair one of the windows. The Tenant stated that the window was repaired in April 2024. The Tenant stated that 6 windows are still needed to be repaired/replaced.

- [13] The Tenant stated that due to the windows not retaining heat, the cost of electricity increased. The Tenant stated that this has negatively impacted him financially. The Tenant stated that the Rental Unit is heated by electricity. The Tenant stated that \$2,550.00 in compensation is reasonable for the past two years for increased electricity costs due to the windows.
- [14] The Tenant stated that there were delays with replacing the initial three windows, but believed that the Landlord was going to replace all the windows as the advertisement suggested. The Tenant stated that three windows do not have bug screens.

LANDLORD'S EVIDENCE AND SUBMISSIONS

- [15] The Landlord submitted 24-pages of documents into evidence including: emails, the Report, and photographs.
- [16] The Representative stated that despite the Tenants' position and being displeased with the windows, the Landlord is following the opinions of the professionals. The Representative stated that the Landlord complied with the Report's order which required only one window to be repaired or replaced.
- [17] The Representative stated that the Landlord's maintenance staff has assessed the other windows and they are not required to be replaced. The Representative stated that Maritime Electric has increased their prices over the past two years, along with electricity costs generally being higher in the winter months. The Representative stated that the Landlord should not have to pay compensation as the required repairs were completed and the appropriate steps taken to inspect windows at the Tenants' request.

ANALYSIS

Issues i & ii: Must the Landlord repair the Rental Unit and are the Tenants entitled to compensation?

- [18] The Application is seeking repairs to six windows and compensation in the amount of \$2,550.00 for increased electricity costs. Subsection 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.*

- [19] Further, subsections 8(1) and (3) of the *Public Health Act Rental Accommodation Regulations* state:

8. Heating

- (1) *All buildings and dwelling units shall be weather-proof and capable of being adequately heated with a reasonable consumption of fuel and the heating equipment in any building or dwelling shall be in working order and in good repair.*

Minimum temperature

- (3) *All buildings and dwelling units in which the heat is supplied by the owner shall have a temperature of not less than 65 F at all times in each apartment or dwelling unit by means of a heating system approved by the Fire Marshal or an inspector under the Fire Prevention Act.*

- [20] The Tenants initiated the Application under section 75 of the Act. The Tenants bear the onus of proving their claim on a balance of probabilities. This means that a decision-maker must be satisfied there is sufficiently clear and convincing evidence to support the claim.
- [21] For the reasons below, the Officer finds that the Tenants have not established that the Landlord contravened subsection 28(1) of the Act and did not contravene subsections 8(1) and (3) of the *Public Health Act Rental Accommodation Regulations*.
- [22] The evidence establishes that the Tenants brought forward their concerns regarding the windows and their lack of weatherproofing. The testimony from the parties establishes that the Landlord's maintenance staff inspected the windows, measurements were taken, and after some delays, three windows were replaced. The Tenants persisted that the remaining windows needed to be replaced or repaired.
- [23] On February 5, 2024 Environmental Health issued the Report. The Report required the following:
- *Repair or replace the above-mentioned window to ensure that it is weather tight.*
- [24] The Report had an additional recommendation for the Landlord to contact Fire Protection to ensure that the Rental Unit was compliant with fire and life safety requirements regarding fire egress.
- [25] In April 2024, the Landlord completed the requirement from the Report. The Officer notes that the Report only required **one** window to be replaced or repaired. Despite the Tenant's testimony that the remaining 6 windows require repair or replacement, the Officer finds that the evidence does not support this position.
- [26] The Officer finds that the evidence establishes that during the winter months, the Tenants' electricity bill increases. However, the Tenants have not established that the increased electricity costs are a direct result from the windows lack of weatherproofing. Electrical heating costs commonly increase during the winter months on Prince Edward Island. The Tenants have not established that the Landlord contravened their duties under the Act and/or the *Public Health Act Rental Accommodation Regulations*. The Application is denied.

CONCLUSION

- [27] The Application is denied.

IT IS THEREFORE ORDERED THAT

- I. **The Application is denied.**

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