

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 12, 2024, the Tenants filed an amended *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”), requesting a determination that the Landlord entered the rental unit unlawfully and contravened their right to quiet enjoyment and reasonable privacy. In the particulars of the dispute, the Tenants requested compensation of one month’s rent and a guaranteed return of the security deposit. A copy was sent to the Landlord on June 19, 2024.
- [3] On July 19, 2024, a notice of teleconference hearing was mailed to the parties.
- [4] On August 23, 2024, an evidence package was emailed to the parties.
- [5] On August 29, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenants and a Landlord representative (the “Representative”) participated in the hearing.

PRELIMINARY MATTER

- [6] At the beginning of the hearing the parties agreed the tenancy had ended on June 30, 2024, and the security deposit had been returned to the Tenants. Therefore, the Officer does not need to make a determination on the Tenants’ request for the return of the security deposit.

ISSUES

- i. Did the Landlord breach the Tenants’ right to quiet enjoyment and reasonable privacy?
- ii. Are the Tenants entitled to compensation?

SUMMARY OF THE EVIDENCE

- [7] On April 28, 2022, the parties entered into a written fixed-term tenancy agreement for the Rental Unit, for the period of June 1, 2022, to May 31, 2023, which continued as a month-to-month agreement. The Rental Unit is a single-family town house and rent was \$2,060.00 due on the first day of the month. A security deposit of \$2,000.00 was paid. The Tenants vacated on June 30, 2024, and the tenancy ended.

TENANTS’ EVIDENCE AND SUBMISSIONS

The Tenants’ evidence is summarized as follows.

- [8] In January 2023, one of the Landlord’s maintenance employees entered the Rental Unit without the Tenants’ permission. The Tenants had requested an oven repair at the Rental Unit but the Tenants were not provided with notice of the repair and they were not home at the time. In May 2023, the Tenants notified the Landlord that the oven needed to be repaired again. The Tenants told the Landlord that they wanted to be notified when the repair was taking place and requested that they be present anytime a Landlord representative entered the Rental Unit. There were no issues with the May 2023 repair.
- [9] On May 14, 2024, the Tenants returned home to the Rental Unit to find that some lights were on inside the unit and items had been moved in the laundry room. The Tenants did not know if it was a Landlord representative or another person who had entered the Rental Unit so the Tenants sent a message to the Landlord.

- [10] On May 16, 2024, the Landlord responded to the Tenants and notified them that it was a maintenance person who had entered the Rental Unit. The Landlord stated the maintenance person was in the area and he was aware there was an inspection scheduled for the Rental Unit the following day. The Landlord told the Tenants that the maintenance person did enter the Rental Unit a day early for the inspection. The Landlord apologized and said the employee failed to properly confirm if he was able to inspect the Rental Unit that day with the Office Coordinator.

LANDLORD'S EVIDENCE AND SUBMISSIONS

The Representative's evidence is summarized as follows.

- [11] In January 2023, the Tenants had reported a maintenance issue in the Rental Unit. The maintenance employee who attended the Rental Unit at that time thought permission had been given for the employee to enter the Rental Unit to make the repair. The Representative stated that the employee made a mistake and should not have entered the Rental Unit at that time.
- [12] In May 2024, a different maintenance employee knew the Tenants were vacating and an inspection was going to be conducted at the Rental Unit. The employee was in the area and entered the Rental Unit to perform the inspection. The employee was new and he did not check with his supervisor to see if permission had been granted to enter the Rental Unit for the inspection.
- [13] The Representative stated the Landlord was sorry these two incidents had occurred. As a result of the May 2024 incident, the Landlord changed its policies and protocols regarding entering Rental Units and staff has been updated on the new policies. The Representative disputed the Tenants should be entitled to the compensation requested.

ANALYSIS

Issue i: Did the Landlord breach the Tenants' right to quiet enjoyment and reasonable privacy?

- [14] The Tenants are seeking a determination that the Landlord entered the Rental Unit unlawfully and breached their right to quiet enjoyment and reasonable privacy. Clause 85.(1)(a) of the Act states that the Director may make an order "*determining the rights and obligations of a landlord and tenant.*"
- [15] Section 22 of the Act states that a tenant is entitled to the quiet enjoyment and reasonable privacy of a rental unit, including exclusive possession of the rental unit, subject only to a landlord's right to enter the rental unit in accordance with section 23. Clause 23(b) of the Act states that a landlord shall not enter a rental unit for repairs or an inspection unless the landlord provides at least 24 hours written notice, or the tenant gives permission at the time of entry.
- [16] Both parties agreed that a representative of the Landlord entered the Rental Unit once in January 2023 to perform a requested repair and once in May 2024 to perform an inspection before the Tenants vacated. The parties also agreed that the Tenants were not provided with at least 24 hours' notice and the Tenants did not give permission for the entry during those times.
- [17] Based on the evidence presented, the Officer finds that the Tenants have established that the Landlord has breached the Tenants' right to quiet enjoyment and reasonable privacy by entering the Rental Unit twice in contravention of the Act.

Issue ii: Are the Tenants entitled to compensation?

- [18] The Tenants are seeking the equivalent of one month's rent, in the amount of \$2,060.00, due to the Landlord's contravention of the Act. Clause 85.(1)(d) of the Act states that the Director may make an order *"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."*
- [19] The Officer finds that the Tenants have established that there was a "loss" of the Tenant's right to quiet enjoyment and reasonable privacy, as a result of the Landlord's contraventions of the Act, and they are entitled to compensation. In determining the amount by which the value of the tenancy has been reduced, the Officer has considered the seriousness of the situation, the degree to which the Tenants have been deprived of the right to quiet enjoyment and reasonable privacy of the Rental Unit, and the length of time over which the situation had existed.
- [20] The evidence establishes that the Tenants were deprived of their right to quiet enjoyment and reasonable privacy on two separate days. However, the Officer finds that compensating the Tenants two days of rent is not an appropriate remedy in this case. After the initial breach of the Act, the Tenants advised the Landlord that they wished to be notified and present when the Landlord's employees attended the Rental Unit. It was not until after the second breach of the Act that the Landlord changed their policies and procedures.
- [21] The Officer notes that both of the times that the Landlord had entered the Rental Unit, a Landlord employee was there to perform either a repair or inspection. While serious, there is no evidence that the breaches occurred for any malicious reasons. Therefore, the Officer finds that the Tenants' request for compensation equaling one month's rent is also not an appropriate remedy in this case.
- [22] Based on the evidence submitted the Officer finds that the Tenants are entitled to compensation equivalent to seven days of rent, totaling \$474.08.

CONCLUSION

- [23] The Application is allowed in part.
- [24] It is determined that the Landlord has breached the Tenants' right to quiet enjoyment and reasonable privacy in contravention of the Act.
- [25] The Landlord shall pay the Tenants \$474.08 by the timeline below.

IT IS THEREFORE ORDERED THAT

- A. The Landlord shall pay the Tenants \$474.08 by October 7, 2024.

DATED at Charlottetown, Prince Edward Island, this 17th day of September, 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 (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.