

**INTRODUCTION**

- [1] The Tenants seek compensation from the Landlord totaling \$33,693.73 composed of \$26,653.73 to purchase and move from the Unit to other accommodations and \$7,040.00 for a return of four months' rent.
- [2] The Tenants' claim is based upon an incident with one of the Landlord's resident managers on February 29, 2024 (the "Incident").

**DISPOSITION**

- [3] I find that there was a breach of the Tenants' right to quiet enjoyment and therefore I award the nominal amount of \$250.00.

**BACKGROUND**

- [4] The Unit is a two-bedroom, two-bathroom apartment located in a 21-unit building (the "Residential Property") that the Landlord has operated since August of 2018.
- [5] The Landlord and the Tenants entered into a written, one-year fixed-term tenancy agreement that commenced on May 7, 2021. At the end of the fixed-term the tenancy continued on a month-to-month basis. Rent in the amount of \$1,690.00 was due on the first day of the month. At the beginning of the tenancy the Tenants paid a \$812.50 security deposit. The security deposit and interest totaling \$843.41 was returned on July 10, 2024.
- [6] On or about June 1, 2024 the Tenants gave notice to the Landlord that they would be vacating the Unit.
- [7] The Tenants moved out of the Unit near the end of June 2024.
- [8] On September 17, 2024 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking compensation based upon the Incident.
- [9] On September 24, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for October 24, 2024.
- [10] On October 21, 2024 the Rental Office emailed the parties a 53-page evidence package (the "Evidence Package").
- [11] On October 24, 2024 the Tenants ("T1" and "T2"), the Landlord's representative (the "Representative"), the Landlord's property manager ("PM") and two of the Landlord's resident managers ("RM1" and "RM2"; collectively, the "Resident Managers") joined the teleconference hearing. The parties confirmed receipt of the Evidence Package. The parties confirmed that all of the documents they submitted to the Rental Office were included in the Evidence Package.

**ISSUE**

- A. Must the Landlord compensate the Tenants due to the Incident?

**EVIDENCE****Tenants' Evidence**

- [12] The Tenants provided the following evidence. The Tenants stated that before the Incident they were happy in the Unit and had no plans to move out.

- [13] In late January of 2024 the Landlord commenced painting work in common areas of the Residential Property by sanding and prepping the walls. The work stopped and nothing was done on the Tenants' floor for several weeks. T1 stated that he sent a text message to the telephone number shown on the Landlord's website for the Charlottetown office.
- [14] On February 29, 2024 around 5:00 p.m. RM1 came to the Unit and spoke with T1 for approximately ten to fifteen minutes. The Tenants stated that RM1 did not know T2 was in the Unit hearing the conversation.
- [15] The Tenants stated that RM1 was loud and angry. RM1 accused T1 of going over PM's head by directly contacting the Landlord's Halifax office regarding the hallway painting. RM1 told T1 that the painting was done without the knowledge of the Halifax office and this made PM look bad. RM1 told T1 that PM was furious and wanted an apology from T1.
- [16] RM1 told T1 that he had no business asking about the painting, T1 was only a tenant and nothing outside of the Unit was T1's concern. RM1 called T1 an "arsehole" three times and told T1 again he was *"just a tenant here"* before leaving the Unit.
- [17] The Tenants were worried that RM1 would find an excuse to have the Tenants evicted. The Tenants looked all Spring for a similar unit but were unsuccessful finding a new rental. The Tenants found a half-duplex to purchase and notified the Landlords on June 1, 2024 that they would be moving out. The Tenants avoided all contact with RM1.
- [18] The Tenants did not contact PM because RM1 had stated that she was furious. The Tenants waited until July 10, 2024, after they had moved out and received their security deposit, before sending a complaint to the Landlord's upper management regarding the Incident.
- [19] The Tenants stated that the Incident cost them friends, money, stress and anguish.

#### **Landlord's Evidence**

- [20] The Landlord provided the following evidence.
- [21] PM stated that T1's text message regarding the painting actually went to the Landlord's Halifax office on February 28, 2024 and was then emailed to PM by a receptionist. PM then asked the Resident Managers to follow up with the Tenants.
- [22] PM did not have permission for an external company to complete the painting work and therefore she had the work completed in house. PM stated that the Tenants could have directly asked the Resident Managers about the painting work. PM stated that she was not looking for an apology from the Tenants regarding the painting complaint.
- [23] PM did not learn about the Incident until July of 2024.
- [24] PM spoke with a neighbour of the Tenants (the "Neighbour") after the July 10, 2024 complaint. The Neighbour told PM that he did not directly hear what was said during the Incident and only heard something that sounded like music.
- [25] RM1 stated that the Resident Managers have known the Tenants for a long time and they were not strangers. RM1 had told T1 about the Unit when it became available for rent and RM1 had considered T1 a friend.
- [26] With regard to the painting complaint, RM1 stated that he was furious and annoyed at T1 because the complaint put the painters' livelihood in danger. RM1 also felt that the Tenant had embarrassed PM and the Resident Managers by contacting the Halifax Office because it made it look like they did not know what was happening in the Residential Property.

- [27] RM1 stated that on February 29, 2024 he went to the Unit and both Tenants came to the door. RM1 told the Tenants that he wanted to only speak with T1 and T2 left the room. RM1 stated that he spoke with T1 for about three to five minutes. RM1 stated that he raised his voice at T1 but did not yell. RM1 asked T1 if he felt entitled. T1 responded that he was entitled to know what was happening in the Residential Property. RM1 asked T1 why he did not contact one of the Resident Managers and T1 stated that they were never around.
- [28] RM1 told T1 *"As far as I am concerned [T1], you are no friend of mine anymore. You are just a God damned tenant."* RM1 stated that he regretted telling T1 that he was a *"God damned tenant"* because RM1 respects tenants of the Residential Property. RM1 denied calling T1 an *"arsehole."*
- [29] RM1 stated that he thought the issue was resolved. At the hearing RM1 characterized the incident as follows: *"Those are just things that happen in life. Life goes on."* After the Incident RM1 noticed that the Tenants were avoiding contact with him.
- [30] The Representative argued that people try to be professional as possible but altercations happen.

### ANALYSIS

- [31] The issue in this case is whether the Tenants' right to quiet enjoyment was breached due to the Incident and whether the Tenants' claims for compensation are supported. Section 22 of the *Act* states as follows:

*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.*

- [32] I have reviewed the evidence of the parties.
- [33] RM1 and the Tenants knew one another beyond solely a landlord-tenant relationship. However, when RM1 attended the Unit on February 29, 2024 regarding T1's painting complaint he was acting in his role as a resident manager of the Landlord. Therefore, the *Residential Tenancy Act* applied regarding his behaviour with the Tenants.
- [34] The parties provided evidence regarding the intended and the actual recipient of T1's painting complaint. However, it is irrelevant whether the painting complaint was made to the Landlord's Halifax office, Charlottetown office or another office. Regardless of who received the complaint, the Landlord and its staff were required to address the complaint in a calm and professional manner.
- [35] RM1 admitted that he was furious and annoyed with T1 because of the painting complaint. RM1 also admitted that he raised his voice at T1 during the incident. RM1 admitted to making a statement that was worse than the Tenants' evidence regarding this specific statement. RM1 testified that he told T1 he was *"just a God damned tenant"* whereas the Tenants evidence was *"just a tenant."* I find that, based upon RM1's admissions, the Tenants' right to quiet enjoyment was breached due to an unreasonable disturbance.
- [36] It appears to me that RM1 treated T1 poorly in response to T1 making a genuine complaint regarding the condition of the Residential Property.

- [37] During the hearing RM1 broadly commented on the Incident stating that “*Life goes on.*” I note that it is much easier to make such a comment when you are the deliverer of negative communications and not the recipient.
- [38] The Tenants and RM1 provided conflicting evidence regarding additional statements in which RM1 allegedly called T1 an “arsehole.”
- [39] The evidence indicates that the Tenants’ Neighbour did not directly hear any words that were spoken between T1 and RM1. I note that the Neighbour did not testify at the hearing.
- [40] During the hearing RM1 appeared to genuinely give his recollection of what he remembers saying to T1. I note that RM1 made admissions which are against the interests of RM1 and the Landlord. I also note that the statements RM1 admitted to are of a similar severity to the statements RM1 denied. Although the Tenants are adamant that RM1 used this specific profane word three times I do not have enough evidence to make a finding that this specific word was stated.
- [41] I note that there were a number of other options available to RM1 that could have avoided the Incident. RM1 could have waited until he was no longer furious and annoyed before speaking with T1. RM1 could have written a professionally worded letter, email or text message to T1 instead of speaking in person. RM1 could have asked another representative of the Landlord to communicate with the Tenants if RM1 believed that he could not address the painting complaint in a calm and professional manner.
- [42] I note that a breach of a tenant’s quiet enjoyment covers a wide range of behaviour such as physical violence against a tenant, repetitive threats, removing access to a rental unit, and disconnecting services without notice. The Incident was a single occurrence, the Tenants did not lose access to the Unit and no services were restricted by the Landlord. Although I have found that RM1 breached the Tenants quiet enjoyment, it was not behaviour of an extreme nature that would support the substantial claims made by the Tenants.
- [43] Further, to support their claims the Tenants would need to establish that they had mitigated their losses. The Tenants stated that they waited until they had moved out of the Unit and had received their security deposit before a complaint was made with the Landlord’s upper management.
- [44] The Landlord’s upper management was unable to investigate the Tenants’ complaint against RM1 from February 29, 2024 to July 10, 2024, over four months’ after the incident occurred. If the Tenants had immediately made a complaint to the Landlord regarding RM1, then a solution may have been implemented that would have addressed the Tenants’ concerns living in the Unit and avoided the Tenants moving out.
- [45] The Tenants provided evidence that they were concerned of reprisals from the Landlord. I note that the Landlord did not in fact serve the Tenants with any eviction notices or attempt to retain any part of their security deposit. I also note that the *Residential Tenancy Act* provides mechanisms through the Rental Office for disputing unfounded eviction notices and resolving disagreements regarding security deposits. I find that the Tenants did not engage in enough mitigation efforts to support the substantial amounts they are seeking in the Application.
- [46] I find that the nature of the quiet enjoyment breach and the mitigation issues discussed above only support a limited monetary award, in the nominal amount of \$250.00, under clause 85(1)(i) of the *Act*. This amount is payable by the Landlord to the Tenant because RM1 was acting in his role as a resident manager at the time of the Incident.

[47] The Application is allowed in part.

**IT IS THEREFORE ORDERED THAT**

1. The Landlord will pay the Tenants \$250.00 by December 20, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 20th day of November, 2024.

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(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.