

INTRODUCTION

- [1] The Tenant seeks compensation and rent reductions from the Landlord based upon an insufficient hot water system in the Residential Property and noise disrupting the Tenant's quiet enjoyment of the Unit.
- [2] The Landlord seeks to end the tenancy for behaviour regarding smoking and frequent complaints by the Tenant.

DISPOSITION

- [3] The Tenant's compensation claim regarding quiet enjoyment is allowed in part, in the nominal amount of \$100.00. The Tenant's monetary claim regarding the hot water system and the rent reduction claims are denied.
- [4] I find that the Landlord has not established a valid basis for ending the tenancy and the Tenant can continue to reside in the Unit.

BACKGROUND

- [5] The Unit is a two-bedroom, one-bathroom basement apartment located in a four-unit building (the "Residential Property"). Unit 2 is the rental unit located immediately above the Unit.
- [6] The Landlord and the Tenant entered into an oral, month-to-month tenancy agreement for the Unit that commenced on August 1, 2019. The Tenant paid a \$650.00 security deposit before moving into the Unit. Rent in the amount of \$1,089.00 is due on the first day of the month. The rent is scheduled to increase to \$1,114.00 effective February 1, 2025.
- [7] On November 19, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Compensation Application") with the Residential Tenancy Office (the "Rental Office") regarding an insufficient hot water system in the Residential Property and noise from Unit 2 disrupting the Tenant's quiet enjoyment. On December 10, 2024 the Tenant amended this application regarding the amount of the claim.
- [8] On December 10, 2024 the Tenant was served with a *Form 4(A) Eviction Notice* dated December 12, 2024 for behaviour, effective January 31, 2025 (the "Notice"). The particulars of the Notice claim that the Tenant has broken rules regarding smoking on the Residential Property and also claims that the Tenant is a "*malcontent*" frequently making complaints to the Landlord's property manager (the "Representative").
- [9] On December 11, 2024 the Tenant filed a second *Form 2(A) Tenant Application to Determine Dispute* (the "Eviction Application") with the Rental Office disputing the Notice.
- [10] In this decision the Compensation Application and the Eviction Application are together called the "Applications." The correct Rental Office filing dates are stated above.
- [11] On December 20, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 23, 2025 along with a copy of the Applications.
- [12] On January 14, 2025 the Rental Office provided the parties with a 71-page PDF and video evidence (the "Evidence Package").
- [13] On January 23, 2025 the Tenant and the Representative joined the teleconference hearing. The parties confirmed receipt of the Evidence Package.

ISSUES

- A. Has the Tenant established compensation and rent reduction claims based upon the hot water system and noise disrupting the Tenant's quiet enjoyment of the Unit?
- B. Must the Tenant vacate the Unit due to the Notice?

ANALYSIS

[14] At the hearing the Tenant clarified that he was not pursuing a claim against the Landlord regarding an unlawful rent increase. Therefore, this claim is removed from the Compensation Application under clause 80(3)(f) of the *Residential Tenancy Act* (or the "Act").

- A. Has the Tenant established compensation and rent reduction claims based upon the hot water system and noise disrupting the Tenant's quiet enjoyment of the Unit?**

Hot Water System

- [15] At the hearing the parties agreed that a new hot water tank had been installed in the Residential Property around December 18, 2024 and, so far, the new hot water system has not been a problem for the Tenant.
- [16] The Tenant seeks compensation from the Landlord for the period of February 1, 2024 to December 18, 2024 in the monthly amount of \$31.00 (the amount of the rent increase on February 1, 2024) due to insufficient hot water in the Unit for personal use and for the hot water baseboard heating system.
- [17] The parties submitted into evidence text message correspondence regarding hot water issues in the Unit. On January 12, 2024 the Tenant text messaged the Representative complaining of insufficient hot water. The Representative arranged for a plumber to attend to the Unit on multiple occasions to address the Tenant's concerns.
- [18] One of the Tenant's January 24, 2024 text messages indicates that the hot water issue improves later in the day and there was lots of hot water at the time the Tenant sent the message.
- [19] The Representative spoke with the other occupants of the Residential Property and they did not have hot water issues in their units.
- [20] The Tenant sent further messages to the Representative regarding insufficient hot water in the Unit. On July 19, 2024 the Tenant messaged the Representative stating that he was fed up with running out of hot water while showering and the Representative responded stating that he would talk with the plumbers again.
- [21] On August 20, 2024 the Representative stated that the plumber wanted to check the shower tap. The Tenant responded disputing that the handle was the issue and instead the problem was a capacity issue. The Tenant also stated that he wanted to be present when the work was done and the Tenant would not give permission to the plumber or the Representative to let themselves into the Unit.
- [22] The Landlord ultimately decided to install a larger water tank. On October 1, 2024 the Representative updated the Tenant regarding a replacement water tank and this work was completed around December 18, 2024.
- [23] The parties stated that the Department of Environmental Health did not complete an inspection of the Residential Property. Therefore, I do not have the benefit of an inspection report regarding the adequacy of the hot water system before it was replaced.

- [24] Neither party submitted into evidence a document directly from a plumber or another professional regarding issues with the adequacy of the hot water system. Similarly, no plumber or other professional participated in the teleconference hearing to provide their opinion on the adequacy of the hot water system. The parties' text message correspondence only provides second-hand (hearsay) evidence.
- [25] The only direct complaints regarding the hot water system are from the Tenant. No other occupant of the Residential Property provided direct evidence that the hot water system was inadequate.
- [26] I find that there is insufficient evidence to establish that the hot water system services at the Unit from January 12, 2024 to December 18, 2024 support a return of rent to the Tenant or a rent reduction. Therefore, this claim is denied.

Loss of Quiet Enjoyment

- [27] The Tenant seeks compensation from the Landlord for the period of October 4, 2024 onwards in the amount of \$300.00 per month due to a loss of quiet enjoyment due to disturbances coming from Unit 2 late at night, early in the morning and during the day.
- [28] The Tenant stated that he moved into the Unit on August 1, 2019 and there have been six different occupants in Unit 2. The Tenant did not experience noise issues until the current occupants moved into Unit 2 in late September of 2024. The Tenant believes that two or three adults, one child and a pet live in Unit 2.
- [29] There has been frequent noise during the day but the Tenant is most concerned about losing sleep at night.
- [30] The Tenant was woken up during the night on October 4, 2024 due to what sounded like hard items being banged, dropped, dragged and rolled on the floor above the Tenant's bedroom. This noise occurred again the next night and the Tenant text messaged the Representative at 2:12 a.m. on October 5, 2024 with a noise complaint.
- [31] The Unit 2 occupants have also woken up the Tenant at night on the following occasions: October 27, November 9, November 14, November 17, November 20, November 21, November 29, December 2, December 3, December 12, December 13, December 14, December 17, December 19, December 20, December 21, 2024, January 5, January 20 and January 21, 2025. There was a period of time from December 21, 2024 until January 5, 2025 where there were no noise issues during the night but there was noise during the day. The Tenant believes that the Representative is trying to force him out of the Unit through the noise disturbances.
- [32] The Representative stated that two adults, one child and a small cat currently live in Unit 2. One of the occupants had previously lived in Unit 3, which had poor cell phone reception. The occupant asked to move into Unit 2 when it became available. The Representative stated that he had word-of-mouth communication with the Unit 2 occupants about noise but he has not issued any written letter or eviction notice to the occupants.
- [33] The Landlord and the Representative did not provide documentary evidence from the Unit 2 occupants or arrange for any of the occupants to participate in the teleconference hearing.
- [34] Based upon the evidence presented, it has not been established that the Landlord and the Representative are directly responsible for the noise that is disrupting the Tenant's quiet enjoyment. The evidence also does not establish that the Landlord and the Representative intended on forcing the Tenant out of the Unit through noise from Unit 2.
- [35] However, there remains an issue regarding whether the Landlord and the Representative have taken sufficient steps to help protect the Tenant's right to quiet enjoyment of the Unit.

[36] Section 22 of the Act states:

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.

[37] The Landlord is responsible for helping protect the Tenant's right to quiet enjoyment. This includes investigating noise complaints and taking reasonable actions to resolve problems.

[38] In this case the evidence establishes that the Tenant does not have a history of making noise complaints to the Representative. The evidence also establishes that the Tenant has been woken up on numerous occasions due to noise from the current occupants of Unit 2.

[39] The Representative has only discussed the noise issues with the Unit 2 occupants by word of mouth. The Representative has not provided the Unit 2 occupants with a written letter advising of the Tenant's complaints and requesting that the occupants avoid making noise that disturbs the Tenant, particularly late at night and early in the morning. I find that the Landlord and the Representative have taken insufficient steps to address the Tenant's noise complaints.

[40] The Tenant's claims for a rent reduction and a return of rent regarding noise are based 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;

[41] It appears to me that a claim of \$300.00 per month (27.5% of the current rent) is high considering the following:

- It has not been established that the Landlord or the Representative are directly causing the noise or intended to force the Tenant out of the Unit through noise from Unit 2;
- Since October 4, 2024 there have been periods where noise from Unit 2 has not been a problem during the night and early morning;
- The Representative has taken at least some action by speaking with the Unit 2 occupants about the Tenant's noise complaints; and
- The Tenant has continued to occupy the Unit.

[42] I find that a total, nominal amount of \$100.00 is supported to recognize that the Landlord and the Representative have not undertaken sufficient steps to protect the Tenant's right to quiet enjoyment and the Tenant has been inconvenienced.

[43] I find that a rent reduction going forward is not supported because it is unclear at this time whether the noise from Unit 2 will remain a problem. As a result, the Tenant's claim for a rent reduction is denied.

[44] It is ultimately the Landlord's decision whether or not to serve a *Form 4(A) Eviction Notice* to the Unit 2 tenants regarding the noise issue, not the Rental Office.

[45] **I note that before an eviction notice for noise would be served, the Landlord should first fully investigate the Tenant's noise complaints and provide a letter to the occupants of Unit 2 outlining the Tenant's complaints. In the letter the Landlord should provide the occupants with sufficient time to correct the noise issues raised by the Tenant.**

B. Must the Tenant vacate the Unit due to the Notice?

[46] For the reasons below I find that the Notice is invalid and the Tenant's Eviction Application is allowed. The tenancy agreement will continue in full force and effect and the Tenant can continue to reside in the Unit.

[47] The Landlord served the Notice to end the tenancy under clause 61(1)(d), which states:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

[48] The particulars of the Notice outline essentially two reasons for ending the tenancy. The first reason is the Tenant repeatedly smoking within 25 feet of the Residential Property and the Representative has received smoking complaints from other occupants. The second reason is that the Tenant is a "*malcontent*" that makes a significant number of complaints about the Residential Property and the behaviour of other occupants.

Smoking

[49] With regard to the first reason, the Tenant stated that he smokes marijuana during the day or evening to alleviate a medical condition and he does not smoke cigarettes.

[50] The Tenant stated that when he originally moved into the Unit on August 1, 2019 the smoking rule for the Residential Property was that tenants could not smoke inside of the building but tenants could smoke outside near the doors. The Tenant stated that he has complied with this rule but other occupants have not. In particular, two of the current Unit 2 occupants smoke inside the building and the Tenant saw these occupants smoking cigarettes while moving into Unit 2.

[51] The Tenant stated that he has not received complaints from other occupants of the Residential Property regarding smoking. The Tenant stated that he avoids being near open windows when he smokes outside. The Landlord did not provide the Tenant with a warning regarding smoking before serving the Notice.

[52] The Representative stated that, when he began managing the Residential Property in April 2022, smoking was prohibited inside the building and permitted outside. Around October 7, 2024 signs were installed at the Residential Property advising occupants that they must smoke at least 25 feet from the building.

- [53] The Representative stated that he was contacted by an occupant of the Residential Property in the summer and was advised that the occupant had to close their windows because of smoking by the Tenant. The Representative stated that the Tenant has been smoking within 25 feet of the Residential Property after the warning signs were installed.
- [54] I have reviewed the evidence of the parties regarding the smoking matter. The Representative did not submit any written statements from any occupants of the Residential Property complaining about the Tenant smoking. No occupants participated in the teleconference hearing with complaints against the Tenant. It does not appear that the Tenant was given a written or oral warning regarding smoking before the Notice was served.
- [55] I find there is insufficient evidence to support the Landlord's claim that the Tenant smoking beside the Residential Property has breached clause 61(1)(d).

Complaints to Representative

- [56] The parties submitted into evidence message correspondence regarding complaints about the condition of the Residential Property and its occupants.
- [57] I have reviewed the correspondence and note that the Tenant uses profane words and makes an unproven claim that the Representative's sister was causing problems at the Residential Property. The correspondence establishes a strained relationship between the Tenant and the Representative but does not reach a level breaching clause 61(1)(d) of the *Act*.
- [58] The Tenant must refrain from using profane words in his correspondence with the Representative. Although the correspondence does not reach a level supporting termination of the tenancy agreement, further profane correspondence may lead to the end of the tenancy.

Video Evidence

- [59] The Representative provided video evidence and screenshots showing the Tenant at one of the entrances to the Residential Property. The Tenant stated that he did not know that the security camera had been installed.
- [60] I note that in Order LR24-30 the Island Regulatory and Appeals Commission commented on a landlord making a video recording inside of a rental unit, stating as follows:

*"As a final comment, we have concerns about the Landlord taking a video of the Rental Unit without the consent, or even knowledge, of the Tenants. It is clear that the video was taken while the Tenants still occupied the Rental Unit. They were not made aware of the video until the Landlord submitted it into evidence for the purpose of this hearing. **The Act clearly states that tenants are entitled to the right to reasonable privacy. This video was a violation of the Tenants' right to privacy.** With the benefit of the hearing, and now this Order, the Commission is satisfied that the Landlord is now aware he should not have taken the video under these circumstances without express permission. The Commission wishes to make clear to all landlords on Prince Edward Island that a video made in such circumstances is unacceptable."*

- [61] There is a reduced reasonable expectation of privacy outside of a building compared to the inside of a building, particularly compared to the inside of a rental unit where the highest degree of privacy would be expected.
- [62] Nevertheless, the Representative ought to have made it clear to all the occupants of the Residential Property that new security cameras were being installed behind the building before the installation occurred. The Landlord and the Representative must ensure that the right to reasonable privacy is respected for all occupants of the Residential Property.

CONCLUSION

[63] The Compensation Application is allowed in part, in the nominal amount of \$100.00, regarding the noise matter. The Tenant's monetary claim regarding the hot water system and the rent reduction claims are denied.

[64] The Notice is invalid and the Tenant's Eviction Application is allowed. The tenancy agreement will continue in full force and effect and the Tenant can continue to reside in the Unit.

IT IS THEREFORE ORDERED THAT

1. The Landlord will pay the Tenant \$100.00 by March 3, 2025.
2. The tenancy agreement will continue in full force and effect and the Tenant can continue to reside in the Unit.

DATED at Charlottetown, Prince Edward Island, this 31st day of January, 2025.

(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.