

INTRODUCTION

- [1] The Tenant applied for \$273.50 in compensation, claiming that the Landlord breached the *Residential Tenancy Act* (the "Act").

DISPOSITION

- [2] I find that the Tenant's compensation claim is denied.

BACKGROUND

- [3] The Unit is a room in a 5-room building with shared kitchen and bathroom facilities (the "Residential Property").
- [4] In April 2022, the parties entered into a one-year fixed-term tenancy agreement, which was renewed as a month-to-month agreement. A \$520.00 security deposit was paid at the start of the tenancy. Rent is \$547.00, due on the first day of the month.
- [5] On February 7, 2025, the Tenant filed an amended *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application seeks \$273.50 in compensation due to the Landlord's breach of the Act.
- [6] On February 28, 2025, the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for April 1, 2025.
- [7] On March 28, 2025, the Rental Office emailed the parties a 123-page PDF and two videos (the "Evidence Package").
- [8] On April 1, 2025, the Tenant, the Landlord's representative (the "Representative"), and the Landlord's witness joined the hearing. The parties confirmed receipt of the Evidence Package and confirmed that all evidence sent to the Rental Office was included.

ISSUE

- A. Must the Landlord compensate the Tenant due to a breach of the Act?

ANALYSIS

- [9] The Tenant stated that he is seeking \$273.50 in compensation because the Landlord's witness ("BL") has been smoking in the Residential Property, and the Representative is not protecting his right to unreasonable disturbance of the rental unit.
- [10] The Tenant stated that he has not observed BL smoking within the Residential Property, but he believes that BL is smoking inside. He stated that tenants are not allowed to smoke in their units or within the Residential Property. The Tenant stated that there was no issue with anyone smoking in the Residential Property until BL moved in around July 2024.
- [11] The Tenant stated that he can often smell cigarette smoke when he is in his Unit, and the smoke comes in under his door. He stated that he can often smell smoke in the common areas of the Residential Property. The Tenant stated that he does not smoke in his Unit and stated that he smokes outside.

- [12] The Tenant stated that he had raised the smoking issue with the Representative on several occasions, but the smoking has continued. The Tenant agreed that the Representative had warned the tenants about smoking, but BL continues smoking within the Residential Property. The Tenant stated that BL and possibly other tenants are harassing him by leaving cigarette butts by his door because he has complained to the Landlord about smoking.
- [13] BL denied that he smokes in his unit or the Residential Property. BL stated that he may take part of an unlit cigarette back into his Unit with him, but he does not smoke inside. BL stated that the Tenant smokes in his Unit and he is being hypocritical.
- [14] The Representative stated that she warned the tenants several times not to smoke in the Residential Property because of the Tenant's complaints. The Representative stated that BL has denied smoking within the Residential Property, and she has not witnessed anyone smoking inside.
- [15] The Representative stated she attended the Residential Property on different occasions, but because her spouse smokes, she is unable to detect the smell of smoke in the Residential Property. The Representative submitted two videos as evidence, which she stated show BL going outside to smoke.
- [16] 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.
- [17] The Tenant has the burden of proving, on a balance of probabilities, his allegations that the Landlord is not protecting his right to freedom of reasonable disturbance of the rental unit. The Tenant alleges that the Landlord is not properly addressing his smoking complaints and that BL is still smoking in the Residential Property.
- [18] The Tenant testified that he believed that BL was smoking inside the Residential Property because there was no issue with smoke in the Residential Property until BL moved in. However, both the Tenant and Representative testified that neither of them had seen BL smoking within the Residential Property. Furthermore, BL denied that he smokes within the Residential Property and stated that he sometimes takes partially used but unlit cigarettes back inside with him.
- [19] I find that the Tenant has not provided sufficient evidence to establish that BL has been smoking in the Residential Property. BL provided an alternative reason as to why the smell of smoke may be in the Residential Property, and no one has witnessed BL or other tenants smoking inside. Furthermore, both the Tenant and the Representative agreed that the Landlord has warned the tenants not to smoke within the Residential Property.
- [20] I find that the Tenant has not provided sufficient evidence to establish that the Landlord has breached the Act by failing to protect the Tenant's right to freedom from unreasonable disturbance of the rental unit.

IT IS THEREFORE ORDERED THAT

1. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 9th day of April, 2025.

(sgd.) Mitch King

Mitch 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.