

INTRODUCTION

- [1] This decision determines an application filed with the Residential Tenancy Office (“Rental Office”) under the *Residential Tenancy Act* (“Act”).
- [2] The Tenants filed an application seeking compensation in the amount of \$600.00 for excessive heating costs because the Landlord failed to repair and maintain the Unit.

DISPOSITION

- [3] The Tenants will offset \$234.00 against solely June 2025’s rent. The Tenants are only responsible for \$1,000.00 due on or before June 1, 2025.

BACKGROUND

- [4] The Unit is a two-bedroom and one-bathroom rental unit located in an 18-unit apartment building (“Residential Property”), owned by the Landlord.
- [5] The tenancy agreement is a written, fixed-term agreement for the period of March 1, 2022 to March 31, 2023. At the end of the fixed-term the tenancy continued on a monthly basis.
- [6] Rent is \$1,234.00 due on the first day of the month. A \$1,170.00 security deposit was paid in February of 2022.
- [7] On March 3, 2025 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (“Application”) with the Rental Office seeking compensation for excessive heating costs because the Landlord failed to repair and maintain the Unit.
- [8] The Application was amended on March 7 and March 14, 2025 and the amended Application was served to the Landlord.
- [9] On March 28, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for May 6, 2025, along with a copy of the amended Application.
- [10] On April 29, 2025 the Rental Office made available in TitanFile a 67-page PDF and five video-recordings evidence package.
- [11] On May 6, 2025 one of the Tenants (“Tenant”) and the Landlord’s representative (“Representative”) joined the hearing for determination of the Application. The Tenant represented the Tenants at the hearing. The parties confirmed receipt of the evidence package and that all evidence sent to the Rental Office was included.

ISSUE

- A. Have the Tenants established a claim for compensation against the Landlord?

ANALYSIS & FINDINGS

- [12] The Tenant requests compensation in the amount of \$600.00 for excessive heating costs because the Landlord failed to repair and maintain the Unit’s balcony door.

Tenants' Evidence

- [13] The Tenant stated that the Unit's balcony door has had functionality issues since the start of the tenancy. The problem has led to recurring noise disturbances, cold air leakage and recently restricted access to the balcony. The Tenant stated that this has led to loss of quiet enjoyment and full use of the Unit. The Tenant also stated that this has caused an increase in heating costs.
- [14] The Tenants submitted four video-recordings into evidence. The video recordings are different examples of the balcony door making loud noises caused by the wind.
- [15] The Tenants also submitted a timeline of events throughout the tenancy. The Tenant stated that the Representative was notified of the balcony door issues many times throughout the tenancy. The Tenant stated that the Representative has repeatedly relied on short-term and ineffective fixes for the balcony door.
- [16] The Tenant stated that the loud noises caused by the wind was bad in the Summer of 2022 and that the other tenant informed the Representative of the noise. The Tenant stated that the Representative requested a video-recording of the noise, which was sent to the Representative in November 2022.
- [17] The Tenant stated that the Representative's most recent fix was sealing the balcony door with weather stripping. The Tenant stated this resolved the noise from the wind and reduced the electricity bill by \$70.00 the next month. However, it has now restricted access and use of the balcony. The Tenant stated that everyday use of the balcony is limited, which negatively impacts the continued enjoyment and use of the Unit.
- [18] The Tenant did not disagree that the Representative had taken steps to fix the balcony door. The Tenant stated, however, that the Representative has not given sufficient updates and would consistently delay in responding to complaints. The Tenants stated that these delays caused daily inconveniences, noise disturbances, uncomfortable living conditions and increased heating costs for an unreasonable amount of time.
- [19] The Tenant stated that the Application is seeking a one-time lump sum compensation of \$600.00 for additional heating costs specifically incurred as a result of the faulty balcony door. This request is based on the assessment of the monthly electricity bills, comparing the period when the balcony doors were temporarily sealed on all sides to the time when the balcony door was not sealed. The Tenants submitted some Maritime Electric bills into evidence.

Landlord's Evidence

- [20] The Representative stated that she looked into replacing the balcony door in November 2023, and requested the Tenants provide the brand of the glass located on the balcony door.
- [21] The Representative stated that in January 2023 she contacted Black Oak Construction ("Black Oak") to do the initial repairs of the balcony door. The Representative stated that she was told by Black Oak that there was loose seal on the balcony door, which needed to be replaced. The Representative stated that she approved the work, however, Black Oak were delayed due to other projects related to Hurricane Fiona.

- [22] The Representative stated that in December 2023 she contacted another service company, Premier Win Dor Services ("Premier"). Premier sent a technician to the Unit, and the Landlord paid the \$198.81 invoice. The Representative submitted into evidence a video-recording of the conversation she had with the Premier technician. The Representative stated that the Tenants reported the issue with the balcony door continued. The Representative stated that she informed Premier, and they stated that weather stripping was required. The Representative stated that she did not hear from Premier for a while and contacted them in October 2024. The Representative stated that Premier's supplier had delays with the product.
- [23] The Representative stated that she contacted KCS Contracting ("KCS"), who visited the Unit on November 6, 2024. On November 19, 2024 new weather stripping was installed.
- [24] On February 14, 2025 the Tenants reported that the loud noise from the balcony door continued. The Representative stated that she contacted KCS right away. On February 28, 2025 KCS told the Representative that the balcony door needed to be replaced. The Representative stated that a temporary fix was completed by caulking the door frame which resolved the noise disturbances and cold air leakage.
- [25] The Representative stated that on April 28, 2025 an order was placed to replace the balcony door. The Representative stated that once the door arrives it will be replaced entirely.
- [26] The Representative stated that she has done everything to resolve the Tenants' complaints. The Representative stated that she does not think the Tenants should be awarded compensation because she has contacted many contractors and much of the delays were outside of the Landlord's control.

Determination

- [27] The Tenants are seeking compensation for additional heating costs because the Landlord failed to repair and maintain the Unit's balcony door which also diminished the Tenants' right to quiet enjoyment.
- [28] Clauses 22 and 28(1) of the Act state:

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.*

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.*

[29] Clauses 8(1) and 9(a) of the *Public Health Act Rental Accommodation Regulations* ("Public Health Regulations") state:

(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.*

The owner of any dwelling shall, when necessary

(a) *carry out repairs or alterations to such dwelling in order to make it sound, weatherproof, damp-proof, vermin-proof, safe and sanitary in every respect;*

[30] In these circumstances, I find that the evidence establishes a dichotomy where the Representative took steps to address the Tenants' complaints regarding the balcony door. However, due to numerous delays and inadequate repairs, the Tenants' suffered loss of enjoyment and use of the full Unit for a prolonged period of time.

[31] The evidence establishes that the balcony door was not weatherproof, causing insufficient insulation, leading to excessive heating costs and disturbing loud noises during strong winds.

[32] I find that despite the Landlord's efforts, the Unit was not repaired and maintained, was not weatherproof and that the Tenants' quiet enjoyment and use of the Unit was impeded for an unreasonable length of time.

[33] I note that the Island Regulatory and Appeals Commission ("Commission") in Order LR25-08 awarded a tenant compensation for excessive heating costs because the landlord failed to provide new windows as promised on the rental advertisement. Particularly, the Commission stated (paragraph 19):

"In other words, the Landlord could and should have avoided the situation it now finds itself in by installing new windows. Given the circumstances, the amount of increased heating costs occasioned by the Landlord's failure to complete the promised installation of new windows cannot objectively be calculated and it would be unreasonable to expect the Tenants to be able to provide an exact calculation."

[34] Similarly, in this case, I find that the Landlord could have avoided this situation if the balcony door was replaced sooner after the first or even second failed repair attempt.

[35] The Tenants' claim for compensation is based upon excessive heating costs associated with the balcony door. The Tenants submitted Maritime Electric bills for January to February, February to March 2025 and March to April 2025.

[36] I find that the evidence does not support the full amount of the Tenants' claim for compensation. The Tenants continued to have use of the essential features of the Unit throughout the tenancy, and based upon a review of the Maritime Electric bills submitted into evidence the kilowatts used are much lower during the warmer months.

[37] I find that the evidence supports the Tenants being awarded compensation due to the length of time they suffered a breach of their quiet enjoyment, and losing access to the use of their balcony. The Tenants suffered inconveniences (see clause 85(1)(i)) due to these breaches. The Tenants are entitled to an amount of \$234.00.

[38] This amount accounts for some of the excessive heating costs associated with January to March 2025 and also considers a nominal amount awarded for the breach of quiet enjoyment during strong winds and loss of access to the balcony since February 28, 2025.

- [39] Therefore, I find that the Application is allowed in part, the Tenants will offset \$234.00 against June 2025's rent.
- [40] The Tenants are only responsible for the remaining balance of June 2025's rent, in the amount of \$1,000.00 due on or before June 1, 2025.

IT IS THEREFORE ORDERED THAT

1. The Tenants will offset \$234.00 against solely June 2025's rent.
2. The Tenants are only responsible for \$1,000.00 due on or before June 1, 2025.

DATED at Charlottetown, Prince Edward Island, this 28th day of May, 2025.

(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.