



Date Issued: November 1, 2023
Docket: LR23082
Type: Rental Appeal

INDEXED AS: MacDonald Construction Ltd. v. Brianna Gordon and Clint McMurray
Order No: LR23-60

BETWEEN:

MacDonald Construction Ltd.

Appellant

AND:

Brianna Gordon and Clint McMurray

Respondent

ORDER

Panel Members:

M. Douglas Clow, Vice-Chair
Kerri Carpenter, Commissioner
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

1. INTRODUCTION

1. This appeal was heard by the Commission on October 18, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a return of rent to the Tenants was warranted, ordering repairs to the residential premises and reducing the monthly rent until such repairs were completed.

2. BACKGROUND

2. On or about mid-October, 2022, MacDonald Construction Ltd. (the “Landlord”) entered into a rental agreement for one-half of a duplex located at 5 Elizabeth Crescent, Stratford, PE (the “Premises”), with Brianna Gordon and Clint McMurray (collectively the “Tenants”). Rent for the Premises is \$1,224 per month with a security deposit paid in the amount of \$622.
3. On July 10, 2023, the Tenants filed with the Director an application to determine dispute (the “Application”). The Application sought enforcement of a previous Order issued by the Director of Residential Rental Property (as it was known then) and the return of rent in the amount of \$7,464.
4. In Order LD23-414 dated September 6, 2023 the Rental Office ordered: the Landlord to pay the Tenants \$2,500 on or before September 30, 2023; replace the damaged interior ceiling within 60 days of the Order; and set the rent for the Premises at \$744 per month until the steel roof installation is completed.
6. The Landlord filed an appeal with the Commission.
7. The Commission heard the appeal on October 18, 2023. The Landlord was represented by Roddy MacDonald (“Mr. MacDonald”). Kody MacDonald and Andrew Hardy (“Mr. Hardy”) testified for the Landlord. The Tenants were present and represented themselves.

3. DISPOSITION

8. The appeal is allowed in part. The Commission has varied the return of rent and the temporary rent reduction.

4. ANALYSIS

9. Mr. MacDonald testified that he has been running the Landlord’s business for 45 years. His son Kody is involved in the business and Mr. Hardy is a red seal carpenter. Mr. MacDonald described the roof leaks as minor, noting no mold developed and the flooring was not damaged. He noted there was enough moisture that the drywall tape on the ceiling let go. He noted that the Tenants would contact the Landlord about a leak and the Landlord would promptly send someone up to repair the roof. He described the leaks as pinhole leaks.
10. Mr. MacDonald stated that the Landlord did not attend the very first hearing before the Rental Office as they had very recently repaired the roof and thus they assumed that

hearing was cancelled. He noted that they did attend the second hearing which is the subject of this appeal.

11. Mr. Hardy testified that he has worked on roofs for 20 years. He described how on one occasion he noticed a roofing nail sticking up, believed that to be the cause and repaired it. He was then contacted again – the issue was in a different spot. He described the repairs as meant to last the rest of the remaining life of the roof – in this case 5 years.
12. Kody MacDonald testified that the roof was in good condition, with no shingles off, no boards showing and several years of life left.
13. At the request of the Commission, the Landlord filed pictures after the hearing of the present state of the roof.
14. The Tenants testified that there was visual damage to the roof and referenced a photograph on page 21 of the Commission file materials. They explained they had to cancel plans on occasion to deal with the roof. They used buckets to catch the water and protect the floor. They also placed plastic tote containers in the attic to catch the leaks close to the source.
15. The Commission finds that the Landlord made all reasonable attempts to have leaks repaired by a professional within a reasonable timeframe of being advised that there were leaks. The Commission recognizes that despite a Landlord's best efforts, it may not be possible to find the exact source of the leak each time, and the Commission finds that based on the evidence, even though leaks were repaired, new leaks occurred.
16. The Commission finds that the Tenants were attentive in catching the water to avoid damage to the floor. Their use of totes in the attic to catch water was commendable.
17. Due to the actions of both the Landlord and the Tenants, there is no evidence of mold as confirmed by the August 14, 2023 Environmental Health report (Exhibit E-5(a), pages 24 to 26 of the Commission file materials).
18. The Commission is mindful of the delays experienced by homeowners and landlords seeking to install a new roof due to the demands on those involved in the construction industry in Prince Edward Island. The Commission notes that the Landlord is proceeding to install a new steel roof, and the pictures filed immediately post-hearing show the roof to be in the strapping stage, with no steel roofing panels yet installed.
19. The numerous roofing leaks, although promptly repaired, represented an inconvenience for the Tenants, primarily in respect of one room in the home they rented from the Landlords. However, there is no evidence that they could not live in the Premises for a period of time. There is also no evidence that any rooms had to be blocked off and left unused in their entirety. The Tenants were able to use the home for throughout the time they dealt with the leaks. Nevertheless, the inconvenience to the Tenant is genuine. On balance, the Commission finds the return of rent and monthly rental reduction ordered by the Rental Office to be excessive given the extent of the impact on the Tenant's use of the rental premises.

20. The appeal is allowed in part. It is the Commission's understanding that the Tenants no longer reside in the Premises, given their Form 3 Tenant Notice of Termination, dated August 28, 2023 to be effective September 30, 2023. The Commission allows a return of rent in the amount of \$100.00 per month for each of four months, for a total of \$400.00. In addition, the monthly rent for the unit is reduced to \$1,124.00 per month until such time as the steel roof is completed. The Commission also requires the Landlord to comply with the requirements of the August 14, 2023 Environmental Health report.

5. CONCLUSION

21. The appeal is allowed in part. Return of rent is reduced to \$400.00 representing a monthly rate of \$100.00 for four months. The monthly rent is reduced by \$100.00 per month and may return to \$1,224.00 per month once the steel roof is complete. Full compliance with the August 14, 2023 Environmental Health report is also required.

IT IS ORDERED THAT

- 1. The appeal is allowed in part.**
- 2. A return of rent of \$100.00 per month for four months, to a total of \$400.00, shall be paid by the Landlord to the tenants forthwith.**
- 3. The monthly rent for the Premises shall be reduced to \$1,124.00 until such time as the new steel roof has been completed. Once complete, the rent may return to \$1,224.00 per month.**
- 4. Full compliance with the August 14, 2023 Environmental Health report is required.**

DATED at Charlottetown, Prince Edward Island, Wednesday, November 1, 2023.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

(sgd. Murray MacPherson)

Murray MacPherson, Commissioner

NOTICE

Subsections 26(2), 26(3), 26(4) and 26(5) of the *Rental of Residential Property Act* provides as follows:

26. (2) A lessor or lessee may, within fifteen days of the decision of the Commission, appeal to the court on a question of law only.

(3) The rules of court governing appeals apply to an appeal under subsection (2).

(4) Where the Commission has confirmed, reversed, or varied an order of the Director and no appeal has been taken within the time specified in subsection (2), the lessor or lessee may file the order in the court.

(5) Where an order is filed pursuant to subsection (4), it may be enforced as if it were an order of the court.