



Date Issued: December 5, 2024
Dockets: LR 24062
Type: Rental Appeal

INDEXED AS: Mary Mermuys and Chris Mermuys v. Santanna McQuillan
Order No: LR24-68

BETWEEN:

Mary Mermuys and Chris Mermuys (the "Landlords")

Appellants

AND:

Santanna McQuillan

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on October 22, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that:
 1. *The Landlords must pay the Tenant \$4,332.36 by November 1, 2024.*
 2. *The Landlords must reimburse the Tenant for further water expenses caused by the lack of potable water in the Unit until the Landlords ensure the water is potable.*
 3. *The Landlords must reimburse the Tenant for further laundry expenses caused by the absence of a properly functioning washing machine installed in the Unit until the Landlords have installed a properly operating washing machine.*
 4. *As of September 1, 2024, the Unit’s monthly rent is reduced as follows:*
 - *A reduction of \$100.00 per month until the Landlords ensure the Unit has potable water;*
 - *A reduction of \$20.00 per month until the Landlords install a properly functioning washing machine in the Unit; and*
 - *A reduction of \$100.00 per month until the Landlords fully comply with the Environmental Health Report.*

B. BACKGROUND

2. This appeal concerns a rental unit located at 1120 South Montague Road, Montague, PEI (the “Rental Unit”). The Landlord and Tenant entered into a written month to month tenancy agreement on May 21, 2019. Rent was \$404.68 due on the first day of each month.
3. On May 9, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order against the Landlord based upon the condition of the Rental Unit and inadequate services. The Tenant seeks a return of rent and rent reduction commencing December of 2023.
4. On July 16, 2024 at 9:00 a.m. the Tenant and the Landlords participated in a hearing before the Residential Tenancy Officer (the “Officer”) for determination of the Application. The parties provided additional documentary evidence at the hearing.
5. The Residential Tenancy Office issued Order LD24-260, on August 15, 2024, which Ordered:
 1. *The Landlords must pay the Tenant \$4,332.36 by November 1, 2024.*
 2. *The Landlords must reimburse the Tenant for further water expenses caused by the lack of potable water in the Unit until the Landlords ensure the water is potable.*

3. *The Landlords must reimburse the Tenant for further laundry expenses caused by the absence of a properly functioning washing machine installed in the Unit until the Landlords have installed a properly operating washing machine.*

4. *As of September 1, 2024, the Unit's monthly rent is reduced as follows:*

- *A reduction of \$100.00 per month until the Landlords ensure the Unit has potable water;*
- *A reduction of \$20.00 per month until the Landlords install a properly functioning washing machine in the Unit; and*
- *A reduction of \$100.00 per month until the Landlords fully comply with the Environmental Health Report.*

6. The Landlords appealed Order LD24-260 on September 4, 2024.

7. The Commission heard the appeal on October 22, 2024. The Landlords, Mary Mermuys and Chris Mermuys, attended in person. The Tenant, Santanna McQuillan, attended via telephone.

C. DISPOSITION

8. The appeal is allowed in part. Order LD24-260 is varied to reflect changed circumstances with respect to the ownership of the Rental Unit and to reduce the awarded return of rent given the minimal nature of rental income.

D. SUMMARY OF EVIDENCE

9. The Landlords' stated that Order LD24-260 is unreasonable and unmanageable. They stated that effective July 17, 2024 they no longer own the Rental Unit. They stated that rent was \$404.68 per month and after paying site rent they only had \$261.00 per month. They stated that the Tenant now owns the Rental Unit. They expressed concerns about their rights repeatedly stating, "do we have any rights?"

10. The Tenant stated that what is relevant are the issues prior to the sale of the Rental Unit. The Tenant noted her right to potable water and that the rental agreement committed the Landlords to provide a working washing machine. She stated that she incurred expenses for the purchase of bottled water and to wash laundry at a laundromat. She also noted that the roof was damaged as a result of tropical storm Fiona and was not repaired. She has provided receipts for the bottled water and a table outlining trips to the laundromat. She referred to lugging around bottled water, transporting laundry to and from the laundromat after which she dried the laundry in the working drier. She noted issues with mice, bedroom windows and mold.

11. Exhibit R-1 establishes the new ownership status of the Rental Unit and indicates that many repairs have been made.

E. ANALYSIS

12. Both the present *Residential Tenancy Act* (the “Act”) and the previous *Rental of Residential Property Act* set out rights and responsibilities of both landlords and tenants. Landlords do have rights, but they have a responsibility to provide safe and sanitary housing and provide the services set out in the rental agreement. This matter has a history with the Rental Office and with the Commission, see for example Commission Order LR24-17 issued on April 19, 2024. The evidence has established many deficiencies with the Rental Unit including mold, mice and window issues. In addition, there was an issue with the safety of the water supply and the provided washing machine did not work. Order LD24-260 set out various reimbursements and returns of rent totalling \$4,332.36. Order LD24-260 also ordered future reimbursement for water and laundry expenses as well as a series of rent reductions effective September 1, 2024.
13. With respect to the future reimbursements for water and laundry as well as the rent reductions effective September 1, 2024, it is noteworthy that the hearing before the Rental Office was held on July 16, 2024 and Order LD24-260 was issued August 15, 2024. It appears that neither the Landlords nor the Tenant advised the Rental Office that the Rental Unit had been sold. In fact, the sale of the rental property had been in the works since May 2024 and the rental property sold on July 17, 2024, the day following the hearing. Based on this information which appears was not before the Residential Tenancy Officer, the future rent decreases and the future reimbursement of water and laundry expenses no longer apply to the Landlords. In fact, it appears that the Rental Unit may no longer be a rental unit as it is now owned by the Tenant. Accordingly, Order LD24-260 is varied to remove such future rent decreases and future reimbursements of expenses as they apply to the Landlords.
14. This leaves the matter of the calculation of \$4,332.36 representing expenses and returns of rent applicable during the timeframe that the Landlords owned the Rental Unit and thus were responsible as lessors under the Act.
15. The Landlords are attempting to persuade the Commission that the \$4,332.36 should be eliminated or reduced based on the fact that their income from the Rental Unit, after paying site rent to a third party, was only \$261.00 per month.
16. The Commission finds that the drinking water and laundromat expenses were out of pocket expenses incurred by the Tenant. The Commission will not reduce these expenses as the Landlords had the responsibility to provide potable water and a working washing machine for the benefit of the tenant and her family, and the Commission accepts that the expenses were incurred and were reasonable.
17. With respect to the rent reduction, the Commission agrees with the time frames as ordered by the Rental Office, except that the ending point for any adjustments is July 16, 2024 being the last date the Landlords owned the Rental Unit before it was sold.
18. The Commission agrees with the Rental Office that a reduction in rent is appropriate, given that the Landlord failed to provide potable water and a washing machine. However, with respect to the amount to be awarded, the Commission finds that the rent reduction of \$220 per month by the Rental Office (being \$100 for lack of potable water, \$20 for lack of a working washing machine and \$100 as a result of the items required by the Environmental

Health report) is higher than should be awarded in this situation. The reduction in rent awarded represents 54% of the overall rent amount. While the items that trigger the adjustment are not insignificant, the Commission finds that a 54% rent reduction is much too high. The Tenant remained living in the Rental Unit and other than having to bring in potable water and use the laundromat for washing, there is little evidence of any significant issues at least compared to the state of the unit when the Tenant moved in.

19. Rental adjustment amounts in situations where the Tenant is able to remain living in a rental unit is a subjective assessment. Given the facts of this situation, the Commission sets the rent adjustment amount at \$20.00 per month regarding the potable water, \$10.00 per month regarding the lack of a washing machine, and \$20 per month regarding the items set out in the Environmental Health letter.
20. Accordingly, the following table sets out the amounts owing by the Landlords to the Tenant:

Item	Amount
Potable water reimbursement Oct 19, 2023 to July 13, 2024	\$1,658.36
Potable water return of rent (Dec 2023 to July 2024)	\$ 160.00
Laundry reimbursement (Oct 2023 to mid-July 2024)	\$ 884.00
Laundry return of rent (6 months, up to July 2024)	\$ 60.00
Return of rent for mice, mold and window issues (Mid-January 2024 to Mid-July 2024)	\$ 120.00
Total	\$2,882.36

F. CONCLUSION

21. The appeal is allowed in part. The outcome of Order LD24-260 is varied. The Landlords are ordered to pay the Tenant the sum of \$2,882.36 representing past reimbursements and past returns of rent. The Landlords are not responsible for any reimbursements or rent reductions after July 16, 2024 as they ceased to own the Rental Unit effective July 17, 2024.

IT IS ORDERED THAT

1. **The appeal is allowed in part.**
2. **The Landlords must pay the sum of \$2,882.36 for past reimburses and past rent reductions.**

3. As the Landlords no longer own the Rental Unit effective July 17, 2024, there are no further obligations under the *Residential Tenancy Act* between the Landlords and the Tenant.

DATED at Charlottetown, Prince Edward Island, 5th day of December, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

(sgd. Murray MacPherson)

Murray MacPherson, Commissioner

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.