



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: February 19, 2025

Dockets: LR24071

Type: Rental Appeal

INDEXED AS: Mariam Ali and Mohamed Eldeeb v. Red Sands Property Management Inc.

Order No: LR25-08

BETWEEN:

Mariam Ali and Mohamed Eldeeb (the "Tenants")

Appellants

AND:

Red Sands Property Management Inc. (the "Landlord")

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
Cynthia McCardle, 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 November 21, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Tenant Application to Determine Dispute seeking repairs and a monetary order for compensation in the amount of \$2,550.00 be denied.

B. BACKGROUND

2. The Rental Unit is situated in a 4-bedroom, 2-bathroom over/under duplex. The Landlord is the property management company hired by the property owner.
3. On December 1, 2022 the parties entered into a written fixed-term tenancy agreement for occupancy of the Rental Unit. Upon the fixed-term’s expiry, the tenancy continued as a month-to-month agreement. Rent is \$2,466.85 due on the first day of the month. In October 2022, a \$2,395.00 security deposit was paid.
4. On July 2, 2024 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking repairs and a monetary order for compensation in the amount of \$2,550.00. The Application was emailed to the Landlord.
5. On August 15, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). One of the Tenants (the “Tenant”) and the representative for the Landlord (the “Representative”) participated at the hearing.
6. On September 11, 2024, The Residential Tenancy Office issued Order LD24-290, which Ordered that the Application seeking repairs and a monetary order for compensation in the amount of \$2,550.00 be denied.
7. The Tenants appealed Order LD24-290 on September 27, 2024.
8. The Commission heard the appeal on November 21, 2024, by way of telephone conference. The Tenants, Mohamed Eldeeb and Mariam Ali, attended on their behalf and Kyle Gillis attended as representative for Red Sands Property Management Inc.

C. DISPOSITION

9. The appeal is allowed in part. Compensation in the form of reduced rent for the winter months of the tenancy is awarded.

D. SUMMARY OF EVIDENCE

10. Mr. Eldeeb testified that the Tenants noticed some issues very early in the tenancy and reported them while other issues were noticed as the tenancy progressed. He stated that the initial electricity bill in January 2023 was for about \$560 and the Tenants then used energy conserving measures such as lowering the individual thermostats and turning down the heat when a room was not in use. This did lower the electricity bill but it was still

far too high in winter. The Tenants were aware of drafts, moisture and mold issues with the windows and they noted that the file contains pictures and thermal images to prove this.

11. Mr. Eldeeb testified that the original advertisement for the Rental Unit which the Tenants viewed on Facebook stated that the Rental Unit was undergoing renovations and would have new windows installed all around. However, when the Tenants moved in in December 2022 only 3 of the 12 windows had been replaced. Only one additional window was replaced during the tenancy; that window was replaced in 2024 after an Environmental Health report required repair or replacement of that window. Mr. Eldeeb testified that in the fall of 2023 3 new windows had been brought on site but they were the wrong size and not installed. He stated that the 8 old windows remaining were made in 1992.
12. Mr. Eldeeb testified that he understood that a typical electric bill during winter for a similar sized home with electric heat would be about \$350. He referenced a listing on page 49 of the Commission file record of electricity bills by month for the Rental Unit. He noted that the electricity bill for the Rental Unit in summer was about \$100 to \$120 with the difference attributable to the heating cost. He stated that the average electricity bill over the entire tenancy is about \$300 per month and the Tenants are requesting compensation for half that amount, e.g. \$150 for every month.
13. Mr. Gillis told the Commission that the Tenants had vacated the Rental Unit on November 15, 2024. Mr. Gillis submitted that the claim for \$150 for each month of the tenancy was an arbitrary number that the Tenants came up with. Mr. Gillis stated that utility bills tend to be higher in winter especially for a unit heated by electricity. He noted that the Rental Unit is a 4 bedroom, 2 bathroom, up and down duplex with 2000 square feet of living area. The Rental Unit uses electric radiators for heat. He stated that heat loss is subjective and heat is not just lost through windows. He noted that the advertisement and renovations started before he commenced employment with Red Sands. He noted that improvements to the Rental Unit are ongoing and there was no timeline for replacement of the windows. Mr. Gillis acknowledged that the tenancy agreement was not in evidence. During the hearing he looked at his copy of the tenancy agreement and noted that he could not find any reference to windows in that agreement. He noted that he could not speak to the Tenant's evidence of 3 windows which were the wrong size and thus not installed in 2023. Upon questioning from the Panel Members, Mr. Gillis acknowledged that the advertisement for the unit referenced the new windows "all around".
14. Mr. Eldeeb confirmed that the Tenants did move out of the Rental Unit in November. He added that they moved out because of the heat issue.

E. ANALYSIS

15. The Commission is mindful of the fact that the Rental Unit was advertised to the public prior to the commencement of the tenancy as "The entire house will be newly renovated" and "we will be installing new windows all around, ..." (see Exhibit E-8, page 17 of the Commission file record). This advertisement predated Mr. Gillis' employment with the Landlord. Mr. Gillis acknowledged the content of the advertisement.

16. The primary basis of the Tenant's argument is that the Commission should find that the cost of heating the building is too high and that the landlord has an obligation to ensure the premises can be heated less expensively. The Commission disagrees with such an assertion. Heating costs depending upon various factors including construction, insulation, windows, the type and efficiency of the heating system, and possibly other factors. There is no requirement in Prince Edward Island that Landlords offer a certain level of efficiency in the heating system. The Commission therefore would not find on the basis of the heating bill amounts, which the Tenant claims are too high, that the Landlord owes the amounts sought by the Tenant.
17. On the other hand, in this case, the Landlord advertised a unit that would be completely renovated including new windows "all around". The Commission finds that the Tenant is entitled to rely on that advertisement. It stands to reason that the Tenant relied upon the advertisement in agreeing to rent the rental unit at the price requested by the Landlord. Therefore, given the undisputed evidence regarding the content of the advertisement and the evidence of the Tenant making many requests regarding the window replacement after moving in, the Commission finds that the Landlord should have replaced the 8 windows which still have not been replaced. Given that the Landlord has not done so and the Tenant has moved out and seeks compensation for what the Tenant claims is unreasonable heating costs, the Commission must determine whether such an award is justified given the Landlord's failure to provide the new windows as promised by virtue of the advertisement.
18. While an exact figure cannot be calculated, the Commission finds that the installation of new windows in the entire unit would have contributed to lowering heating costs. Therefore an award of some amount to the Tenant is reasonable.
19. In terms of calculating an appropriate amount of compensation to the Tenant, the Commission is mindful that this situation has arisen as a result of the Landlord's decision not to follow through with the installation of the new windows. 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.
20. The Commission must determine an amount of compensation in circumstances where the Landlord only replaced 3 of 12 windows prior to the Tenancy commencing, and a 4th window closer to the end of the tenancy.
21. The Tenants claim \$150.00 per month for each of the months from December 2022 to July 2024, see Exhibit E-15, page 49 of the file record. The Commission find that a claim for \$150 per month during the warmer months is excessive and not justified. The Commission will, however, award a claim of \$150 per month for the peak heating seasons of November to March inclusive. During the tenancy, this totals nine months, namely December 2022, January to March 2023, and November to March 2024. The amount of compensation awarded to the Tenant is therefore \$1,350.00 (\$150 per month for 9 months).
22. At the hearing, it appeared as if the Tenants were only pursuing a claim for compensation, given that they no longer live in the Rental Unit. However, their Notice of Appeal also

references repairs. Given that the Tenants have moved out, the request for repairs is no longer relevant.

23. The Commission thanks the Tenants and Mr. Gillis for putting their respective positions forward to the Commission in a respectful and professional manner.

F. CONCLUSION

24. The appeal is allowed in part. The Commission varies Order LD24-290 by allowing part of the claim for compensation.

IT IS ORDERED THAT

1. **The appeal is allowed in part.**
2. **A partial claim for compensation for excessive heating cost is awarded in the amount of \$1,350.00, payable by the Landlord to the Tenants within 30 calendar days of this Order.**
3. **The remainder of the compensation claim is denied.**
4. **The original application to order repair of the Rental Unit is also denied.**

DATED at Charlottetown, Prince Edward Island, 19th day of February, 2025.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Panel Chair

(sgd. Cynthia McCardle)

Cynthia McCardle

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.