

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On June 4, 2024, the Tenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed to dispute an undated *Eviction Notice (Form 4(A))*, for effect on June 30, 2024, (the “Notice”).
- [3] The Notice was posted to the door of the Rental Unit on May 31, 2024, for the following reasons:
- You or someone you have allowed on the property has caused damage to the rental unit;*
You have failed to comply with a material term of the tenancy agreement despite written warning;
You have sublet the rental unit without the landlord’s consent; and
You have knowingly given false information about the rental unit.
- The Particulars of termination stated:
- Pets contrary to lease, smoking in house, having a tenant contrary to lease.*
- [4] On June 18, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant, a Tenant witness, the Landlord, and a Landlord witness participated.

Preliminary Matters

The Notice

- [5] The Officer finds the Notice did not meet the requirement set out in clause 53.(a) which states a notice shall be dated. Clause 85.(1)(l) states that the Director may determine the validity of a notice of termination and amend a notice that does not comply with the Act. During the hearing the parties agreed the Tenant received the Notice on May 31, 2024. After the hearing the Landlord provided photographs of the Notice on the door of the Rental Unit which were date stamped May 31, 2024. The Officer therefore amends the Notice to be dated May 31, 2024.

Additional Evidence

- [6] Prior to the hearing the Tenant forwarded copies of two doctor’s notes to the Rental Office. One note was dated May 27, 2024, and stated the Tenant’s dog provides emotional support and stability with walking. The other note was dated June 10, 2024, and stated the Tenant requires a roommate so he can continue to live independently. The additional evidence was forwarded to the Landlord for any submissions.
- [7] The Landlord replied by email and stated he objected to allowing the notes into evidence. He stated the evidence deadline had passed and the evidence was irrelevant. He stated the tenancy agreement states only the Tenant can live at the unit and no pets are allowed. During the hearing the Landlord provided the same submissions.

Issue to be Decided

- i. Does the Tenant have to vacate the Rental Unit due to the Notice?

Summary of the Evidence

- [8] In July of 2019 the parties entered into a written fixed-term tenancy agreement for the Rental Unit which converted to a month-to-month agreement. Rent is \$1,320.00 due on the first day of the month. A security deposit of \$1,295.00 was paid.

Landlord's Evidence and Submissions

- [9] The Landlord's evidence is summarized as follows. On May 23, 2024, the Tenant allowed the Landlord and the Landlord's realtor to conduct an inspection at the property in preparation for selling the unit. During the inspection he could smell cigarette smoke in the unit but the tenancy agreement states smoking is not allowed. He observed another individual living in a bedroom upstairs but the tenancy agreement states that only the Tenant is permitted to live in the unit. He observed items attached to the wall in the roommate's bedroom which is not allowed without permission.
- [10] The Tenant has a dog and the tenancy agreement states no pets are allowed without permission. He was told at one time the Tenant was looking after someone else's dog but not that he had gotten his own dog. The grass in the yard is damaged because of the dog using the bathroom in the yard, the Tenant is parking on the grass, and the Tenant put up a temporary garage on the grass. Photographs of the dog and the yard were submitted into evidence.
- [11] On May 28, 2024, the Landlord served the Tenant with a warning letter, which is summarized as follows. The Tenant had to stop smoking in the unit immediately. The Tenant's roommate had 14 days to vacate the unit. The dog had to be removed from the unit and the lawn re-seeded in 7 days. The temporary garage in the yard had to be removed within 14 days. The Tenant had to stop parking his vehicles on the grass immediately. The Tenant was to clean the basement by June 1, 2024, as the parties had agreed the Landlord would pay the Tenant \$800.00 for this service.
- [12] On May 30, 2024, the Tenant called the Landlord and stated that he would not be getting rid of his roommate or his dog. The Landlord served the Notice to the Tenant on May 31, 2024, as the Tenant told him he was not going to comply with these requirements in the warning letter. During the hearing the Landlord agreed to extend the vacate date to July 31, 2024.

Tenant's Evidence and Submissions

- [13] The Tenant's evidence is summarized as follows. He had a roommate move in with him sometime in December 2023 because he was injured at work and requires assistance with paying the rent. He cannot evict his roommate and still afford to pay rent.
- [14] The Tenant was required to clean and repair the unit when he moved in. There are other repairs the Landlord has not addressed. The Landlord was aware last year the Tenant had a dog and just said not to let the dog urinate in the yard. The Landlord was aware the Tenant was smoking in the unit. The Tenant has taken down the temporary garage and will re-seed the lawn. Some of the Landlord's timelines in the warning letter were not realistic. The Tenant agreed to try to vacate by July 31, 2024, if he can find somewhere else to live.

Post Hearing Evidence and Submissions

- [15] After the hearing the Landlord submitted photographs of the Notice posted to the door of the Rental Unit. The photos were date stamped May 31, 2024, and copies of the photos were forwarded to the Tenant. No further submissions were received from the Tenant.

Analysis

- [16] The Application is made in accordance with clause 75 of the Act. The Landlord bears the onus of proving his claims on a balance of probabilities. This means that the Officer must be satisfied that there is sufficiently clear and convincing evidence to support the claims. The reasons in the Notice for the termination of the tenancy are as follows:

61. Landlord's notice for cause

(1) A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(f) the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property;

(h) the tenant

(i) has failed to comply with a material term of the tenancy agreement, and

(ii) has not corrected the situation within a reasonable time after the landlord has given written notice to do so;

(i) the tenant purports to assign or sublet the rental unit without first obtaining the landlord's written consent as required by section 30;

(j) the tenant knowingly gives false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person.

- [17] The Landlord stated the material terms of the tenancy agreement the Tenant has failed to comply with are:

The premises shall be used and occupied exclusively by the Lessee for the purpose of a private residence only for the lessee.

Objects shall not be taped or hung from the walls or ceiling.

No painting or alterations to the walls, floors, ceilings, etc. are to be made without written consent of the Landlord.

No pets allowed except by written permission of the Landlord.

There will be no smoking inside the residence under any circumstances.

Damage

- [18] The Landlord stated the Tenant damaged the grass at the property by parking on the grass, erecting a temporary garage on the grass, and allowing his dog to use the bathroom on the grass. The Officer finds that the Landlord has not established the alleged damage was caused by the Tenant. The Landlord did not provide sufficient evidence, such as photographs or inspection reports, from before the Tenant moved in to establish the condition of the grass at that time.

False Information

- [19] The Officer finds that the Landlord has not provided sufficient evidence to establish that the Tenant knowingly gave false information about the Residential Property to a prospective tenant, a purchaser viewing the residential property or another person.

Material Terms and Subletting

- [20] The Landlord stated the Tenant has sublet without permission and breached this material term of the tenancy agreement. The Landlord provided the Tenant with a written warning on May 28, 2024, stating the Tenant was required to have the roommate vacate within 14 days. The Landlord stated the Tenant notified him on May 30, 2024, that he would not be complying with this requirement, so the Landlord served the Notice on May 31, 2024.
- [21] The Officer finds that the Landlord has provided sufficient evidence, specifically the testimony of the parties, to establish that the Tenant has sublet the Rental Unit without first obtaining the written consent of the Landlord and breached a material term of the tenancy agreement.
- [22] Although the Tenant provided a doctor's note stating the Tenant requires a roommate to live independently, the Tenant did not provide sufficient evidence to establish that he requires a roommate for anything other than to afford rent. The Officer finds that the Landlord has established valid grounds for termination of the tenancy agreement.

Conclusion

- [23] The Notice is valid and the Application is denied.
- [24] The tenancy agreement shall terminate effective July 31, 2024, at 5:00 p.m. The Tenant and all occupants shall vacate the Rental Unit by this date and time.
- [25] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement shall terminate effective July 31, 2024, at 5:00 p.m. The Tenant and all occupants shall vacate the Rental Unit by this date and time.
- B. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, this 24th day of June, 2024.

(sgd.) Mitchell King

Mitchell King
Residential Tenancy Officer

NOTICE**Right to Appeal**

This Order can be appealed to the Island Regulatory and Appeals Commission by serving a Notice of Appeal with the Commission and every party to this Order within **7 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.