

**INTRODUCTION**

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On July 16, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) disputing an eviction notice. The Application was emailed to the Landlord’s representative (the “Representative”).
- [3] The Application was supported by a *Form 4 (A) Eviction Notice* (the “Notice”). The Notice was emailed and texted messaged to the Tenant.
- [4] The Notice was dated July 16, 2024 and effective on August 30, 2024. However, that effective date is automatically corrected to August 31, 2024, pursuant to section 54 of the Act. The Landlord served the Notice to the Tenant for the following reasons:
1. *You are repeatedly late in paying rent;*
  2. *You have permitted an unreasonable number of occupants in the rental unit;*
  3. *You or someone you have allowed on the property have disturbed, endangered others or put the landlord’s property at significant risk;*
  4. *You or someone you have allowed on the property have engaged in illegal activity on the property; and*
  5. *You have failed to comply with a material term of the tenancy agreement despite written warning.*

*The particulars of termination state:*

*“Continues to smoke at property despite multiple warnings. Also smoking marijuana. Always late on rent. Doesn’t respect the property or the rules. Health of other tenants at risk due to continued smoking.”*

- [5] On July 17, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [6] On July 29, 2024 the Rental Office emailed and provided access via Titan File the evidence package (the “EP”). Both parties acknowledged they received the EP.
- [7] On August 1, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenant and the Representative participated in the hearing.

**ISSUE**

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

**SUMMARY OF EVIDENCE**

- [8] The Rental Unit is a two-bedroom apartment situated in a 21-unit apartment building (the “Residential Property”).
- [9] In October 2012, the Tenant and the Landlord entered into an oral month-to-month tenancy agreement. Rent is \$777.65 due on the first day of the month. A \$600.00 security deposit was paid in October 2012.

**LANDLORD'S EVIDENCE AND SUBMISSIONS**

- [10] The Landlord did not submit any documents into evidence.
- [11] The Representative stated that there are three primary reasons for the Notice:
- 1) Late payment of rent;
  - 2) Smoking marijuana on the front step of the Residential Property; and
  - 3) Having another person reside in the Rental Unit.
- [12] The Representative stated that the Tenant is repeatedly late paying the rent. The Representative stated that he did grant the Tenant permission to pay rent late on occasion. However, the Tenant has been repeatedly late throughout the tenancy.
- [13] The Representative stated that the Tenant smokes marijuana on the front step of the Residential Property. The Representative stated that there is no smoking within 30 meters of the Residential Property. The Representative stated that he has witnessed the Tenant smoking on the front steps on numerous occasions. The Representative stated that other tenants in the Residential Property have complained about the smell of smoke. The Representative stated that he has only provided the Tenant with verbal warning.
- [14] The Representative stated that the Tenant wanted to bring a roommate into the Rental Unit. The Representative stated that the Rental Unit is a two-bedroom apartment with heat and hydro included. The Landlord is losing money on the Rental Unit and having another person reside in the Rental Unit would increase the costs for the Landlord.

**TENANT'S EVIDENCE AND SUBMISSIONS**

- [15] The Tenant submitted 37-pages of documents including: a copy of the Application, a written submission, FAQs from the Rental Office website, e-transfers, text messages and photographs.
- [16] The Tenant stated that she submitted into evidence all her e-transfers for rent for the past two years. The Tenant stated that she has only been late a few times over the past two years, and the Representative provided her permission to be late. The Tenant stated that the only recent times she was late was April 2024 and December 2023 and both times the Representative provided her permission.
- [17] The Tenant stated that she only smokes medical marijuana under the tree at the end of the Residential Property. The Tenant submitted a photograph of the tree into evidence. The Tenant stated that the sign on the Residential Property's entrance only states "no smoking near this door". The Tenant stated that she does not recall if any other sign mentioned 30 meters away from the Residential Property.
- [18] The Tenant stated that other tenants smoke outside the Residential Property. The Tenant stated that she has never received an oral or written warning from the Representative about smoking outside. The Tenant stated that on one occasion she did smoke on the front step because the snow was not cleared and there was no walkway.
- [19] The Tenant stated that she asked the Representative if her boyfriend could move into the Rental Unit. The Tenant stated that the Representative only would allow it if the rent increased by \$400.00. The Tenant stated that the Representative cannot increase the rent that high and denied the offer. The Tenant stated that her boyfriend has not moved into the Rental Unit and is just a guest who stays from time to time.

**ANALYSIS**

[20] The Tenant filed the Application in accordance to subsection 61(5), pursuant to section 75 of the Act, disputing the Notice. The Landlord's reasons for terminating the tenancy is pursuant to clauses 61(1)(b), (c), (d), (e) and (h) of the Act. The relevant law is 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:*
- (b) *the tenant is repeatedly late in paying rent;*
  - (c) *there is an unreasonable number of occupants in the tenant's rental unit;*
  - (d) *the tenant or a person permitted on the residential property by the tenant has*
    - (i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
    - (ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
    - (iii) *put the landlord's property at significant risk;*
  - (e) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*
    - (i) *has caused or is likely to cause damage to the landlord's property,*
    - (ii) *has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
    - (iii) *has jeopardized or is likely to jeopardize a lawful right or interest of the landlord or another occupant; and*
  - (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.*

[21] The Landlord bears the onus of proving its claims on a balance of probabilities. This means that a decision-maker must be satisfied that there is sufficiently clear and convincing evidence to support the alleged claims.

[22] For the reasons below, the Officer finds that the Landlord has not sufficiently proven its claim for termination of the tenancy. The Notice is invalid and the Application is allowed.

**Repeatedly late payment of rent**

[23] The Officer finds that the Landlord has not provided sufficient evidence to establish that the Tenant has been repeatedly late paying the rent. It is undisputed that the rent is due on the first day of the month and paid by e-transfer. The Representative stated that the Tenant has not been late paying the rent in recent months but has been late repeatedly over the tenancy. The Tenant submitted numerous e-transfer receipts into evidence. The evidence submitted establishes that the Tenant has only been late in April 2024 and then a few months in 2023.

[24] Further, the Officer finds that despite the Tenant being late a few times over the past two years, the evidence establishes that the Representative permitted the Tenant's lateness when requested. The Officer finds that the Landlord has not proven that the Tenant breached clause 61(1)(b) of the Act. This claim is dismissed.

**Number of occupants**

- [25] The Officer finds that the Landlord has not provided sufficient evidence to establish that the Tenant has permitted an unreasonable number of occupants into the Rental Unit. The undisputed testimony provided by the parties establishes that the Tenant requested a roommate to reside in the two-bedroom Rental Unit. The Representative denied the requested due to financial reasons.
- [26] The Officer finds that there is no evidence to suggest that the roommate now lives permanently in the Rental Unit. The Officer further finds that even if a second person lived in the Rental Unit, it would not be unreasonable for two people to occupy a two-bedroom Rental Unit. Therefore, the Officer finds that the Landlord has not proven that the Tenant breached clause 61(1)(c) of the Act. This claim is dismissed.

**Disturbed others, illegal activity and breach of a material term of the tenancy agreement**

- [27] The Officer finds that the Landlord has not provided sufficient evidence to establish that the Tenant has disturbed others in the Residential Property, engaged in illegal activity and/or breached a material term of the tenancy agreement.
- [28] The Officer finds that the Landlord has not submitted any corroborating evidence that the Tenant's actions have disturbed others in the Residential Property. The Landlord did not submit any communication between the Representative and the other complaining tenants. Did not submit any written submission from the other tenants. The best evidence would have been for the other tenants to participate in the hearing, and to provide their witness testimony under the scrutiny of examination and cross-examination.
- [29] The Officer finds that the Landlord has not provided any evidence to support the claim that the Tenant has engaged in illegal activity on the Residential Property. Further, the Officer finds that the Landlord has failed to prove that the Tenant has breached a material term of the tenancy agreement.
- [30] The Officer finds that the parties have an oral, month-to-month tenancy agreement. The Officer finds that the Landlord has not submitted any documentary evidence to reflect that tenants are expected to smoke 30 meters from the Residential Property. The Representative only provided his direct evidence that he witnessed the Tenant on the front steps of the Residential Property smoking on numerous occasions. The Tenant has denied these claims and the Landlord has not provided any corroborating evidence.
- [31] The Officer finds that the Landlord did not provide the Tenant with a written warning as required for clause 61(1)(h) of the Act.
- [32] In conclusion, the Officer finds that the Landlord has not proven that the Tenant breached clauses 61(1)(d), (e) and (h) of the Act. These claims are dismissed.

**CONCLUSION**

- [33] The Notice is invalid and the Application is allowed.
- [34] The tenancy agreement shall continue in full force and effect.

**IT IS THEREFORE ORDERED THAT**

- I. The Notice is invalid and the Application is allowed.**
- II. The tenancy agreement shall continue in full force and effect.**

**DATED** at Charlottetown, Prince Edward Island, this 5th day of August, 2024.

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(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.