

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On August 5, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking earlier termination of the tenancy agreement. The Application included a claim for rent owing, which is the subject of Order LD24-263. The Application was posted to the entrance of the Rental Unit.
- [3] The Application’s particulars state:
- “[The Tenant], owes \$150.00 towards her rent. She has taken a box spring mattress, she pulled out of the garbage, put it up against my back door, with 2 garbage cans up against the box spring so we couldn’t get out, putting a ladder on the back deck. Sneaking men into her room through her bed-room window, had a friend of hers [redacted], who has a no trespassing order against him. He entered my home unlawfully told to leave he refused! Got physical with me, assaulted me, then pulled a knife on my son, cops were called.”
- [4] The Application was supported by a *Form 4 (A) Eviction Notice* (the “Notice”).
- [5] The Notice dated August 5, 2024 for effect August 25, 2024 was served by the Landlord to the Tenant by posting it to the entrance of the Rental Unit for the following reasons:
1. *You have not paid your rent in the amount of \$150.00;*
 2. *You or someone you have allowed on the property have disturbed, endangered others or put the landlord’s property at significant risk;*
 3. *You or someone you have allowed on the property have engaged in illegal activity on the property; and*
 4. *You have failed to comply with a material term of the tenancy agreement despite written warning.*
- The particulars of termination state:*
- “Tenant owes \$150.00 in back rent. [The Tenant’s] friend [redacted], has a no trespassing order against him on this property, yesterday August 1st he illegally entered my home, try to get him out he assaulted me, my son came to help me and [redacted] pulled a knife on him: cops were called.”
- [6] On August 8, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing, along with a copy of the Application.
- [7] On August 12, 2024 the Rental Office emailed the Tenant the evidence package (“EP”). The Landlord picked up a copy of the EP from the Rental Office. The Landlord also posted a copy of the EP to the entrance to the Rental Unit.
- [8] On August 13, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord and the Tenant participated at the hearing.

ISSUES

- i. Is earlier termination of the tenancy agreement warranted?
- ii. Must the Tenant vacate the Rental Unit due to the Notice?

SUMMARY OF EVIDENCE

- [9] In December 2023 the Landlord and the Tenant entered into an oral, month-to-month subtenancy agreement for the Rental Unit, which is a room. Rent is paid by social assistance each month. The parties disagreed over the amount of rent due each month. The Tenant stated that rent was \$650.00, which social assistance paid. The Landlord stated that rent was \$600.00, which social assistance paid. No security deposit was required.
- [10] The Officer requested additional evidence from the parties regarding the disputed rent. The Landlord submitted two pages of additional evidence. The Landlord submitted two invoices from the Province of Prince Edward Island, with the description of the Tenant's name. The first invoice was dated March 28, 2024 in the amount of \$600.00. The second invoice was dated August 2, 2024 in the amount of \$525.00.
- [11] The Tenant submitted a forwarded email of the Rental Office's notice of teleconference hearing details. The Tenant stated that she was awaiting information from her social worker in that same email. The Rental Office responded to the Tenant to request if this was the evidence she intended to submit. The Rental Office requested any additional evidence be submitted before 12-noon on August 15, 2024. On August 18, 2024, the Tenant responded to proceed and that she would not submit any additional documents into evidence.

LANDLORD'S EVIDENCE AND SUBMISSIONS

- [12] The Landlord submitted 15-pages of documents into evidence including: a written warning, handwritten submissions, a witness submission and photographs.
- [13] On August 5, 2024 the Landlord served the Tenant the Notice and the Application seeking earlier termination of the tenancy agreement. The Landlord stated that the Tenant rents a room in the Rental Unit and the Landlord lives in another room in the Rental Unit.
- [14] The Landlord stated that the Tenant owes \$150.00 in outstanding rent for July and August 2024. The Landlord stated that rent is \$600.00 and it is paid by social services. The Landlord stated that she would collect the cheque from the social services office. In July 2024, social services provided a cheque in the amount of \$525.00. The Landlord stated that she was told by a person at social services that the Tenant receives an allowance and that the Tenant would have to pay the remaining \$75.00 balance to the Landlord. In August 2024, the Landlord stated that she received another \$525.00 cheque from social services. The Landlord stated that the Tenant has not paid the outstanding rent as of the date of the hearing.
- [15] The Landlord stated that the Tenant has stolen and damaged her personal property. The Landlord stated that the Tenant has permitted male guests into the Rental Unit. The Landlord stated that the Tenant would use a ladder to either gain access to the Rental Unit or allow her male guests access to the Rental Unit. The Landlord stated that she has not provided the Tenant a key to the Rental Unit because she does not trust the Tenant and that the Tenant knows that the main door is locked at midnight every night.
- [16] The Landlord stated that on June 3, 2024 she gave the Tenant a written warning (EP – 7) regarding her behaviour. The Landlord stated that one of the Tenant's male guests ("D.G.") has a no trespass order filed against him. On August 8, 2024 D.G. entered the Rental Unit. The Landlord stated that she asked D.G. to leave but he refused. The Landlord stated that D.G. assaulted her. The Landlord stated that her son arrived to the Rental Unit and got into a physical altercation with D.G. The Landlord stated that D.G. pulled a knife on her son. The Landlord stated that the police arrived to the Rental Unit and D.G. was arrested.

- [17] The Landlord stated that either August 7 or 8, 2024 the Tenant pushed her into the door frame. The Landlord stated that she received bruises on her arm and back from the incident. The Landlord submitted photographs into evidence (EP – 20 & 21). The Landlord stated that the Tenant called the police after the incident. The police took the parties statement and the Landlord was denied a protection order from the police after she went to the police station.
- [18] The Landlord stated that the Tenant has breached her quiet enjoyment and she no longer feels safe in the Rental Unit. The Landlord stated that another male (“T.M.”) will not leave the Rental Unit. The Landlord stated that she permitted T.M. to stay in the backyard in a tent until the Tenant vacates the Rental Unit. T.M. was supposed to take over the Rental Unit, however, now T.M. has befriended the Tenant and will not leave the Rental Unit.

TENANT’S EVIDENCE AND SUBMISSIONS

- [19] The Tenant stated that rent is \$650.00, and that is the amount that social services gives the Landlord every month. The Tenant stated that she did not know that social services reduced her assistance to \$525.00 until a week prior to the hearing. The Tenant stated that when the Landlord first told her she did not believe her. The Tenant stated that her social worker informed her that starting September 2024, her assistance will increase and the Landlord will receive the full amount of rent.
- [20] The Tenant stated that she has never stolen any personal property from the Landlord.
- [21] The Tenant stated that she did enter the Landlord’s room and threw two jewelry boxes out the window. The Tenant stated that she did this because of the Landlord and the Landlord’s son’s actions and behaviour. The Tenant stated that the Landlord’s son harassed her, yelling at her, and called her a “stupid bitch”. The Tenant stated that the Landlord’s son grabbed her by the chin and threw her to the ground.
- [22] The Tenant stated that she was shocked that the Landlord’s son would actually put his hands on her. The Tenant stated that later that day the Landlord “wacked” her in the back of the head while she was sitting in the kitchen. The Tenant stated that rather than get physical with the Landlord, she went to her room and threw her property out the window.
- [23] The Tenant stated that she has used a ladder to gain access to the Rental Unit through a window. The Tenant stated that she used the ladder because the Landlord locks the door and refused to give her a key to the Rental Unit. The Tenant denied that she permits men to use the ladder to gain access to the Rental Unit. The Tenant stated that D.G. may have used the ladder once or twice.
- [24] The Tenant stated that D.G. does not have a no trespass order filed against him, or that there is no physical copy that was given to D.G. The Tenant states that she never received a written warning from the Landlord. The Tenant stated that it is possible that D.G. removed it from the Rental Unit’s entrance, and did not deny that possibility.
- [25] The Tenant stated that she did not witness the events that happened on August 8, 2024. The Tenant stated that D.G. was supposed to meet her outside the Rental Unit and was not supposed to enter the Rental Unit. The Tenant stated that she did see the police arrest D.G. outside the Rental Unit. The Tenant stated that D.G. was released and now has an ankle bracelet. The Tenant stated that D.G. will not be coming around the Rental Unit again.

- [26] The Tenant stated that she did not assault the Landlord. The Tenant stated that she was cooking chicken and the Landlord started throwing the chicken on the ground and threw the stove covers at her. The Landlord was mad about her personal property being damaged and stolen. The Tenant stated that the Landlord attempted to push her. The Tenant stated that she moved the Landlord away from her and the Landlord slammed into the door frame. The Tenant stated that she barely touched her. The Tenant stated that she called the police. The police did not press any charges and the police did not give the Landlord a protection order.
- [27] The Tenant stated that she does not know who T.M. is, and did not permit him into the Rental Unit. The Tenant stated that the Landlord allowed T.M. into the Rental Unit and that he was going to rent her room after she was evicted.

ANALYSIS

Issue i. Is earlier termination of the tenancy agreement warranted?

- [28] The Application was made in accordance to section 75 of the Act and seeks earlier termination of the tenancy agreement pursuant to clause 61(7)(a) and (b) of the Act, which state:

Landlord may request earlier termination date

- (7) *Despite subsection (3), a landlord who wishes to give notice of termination under subsection (1) may make an application to the Director to request an order*
- (a) *ending a tenancy on a date that is earlier than the tenancy would end if the notice of termination were given under subsection (1); and*
 - (b) *granting the landlord an order of possession in respect of the rental unit.*

- [29] To grant an earlier termination of the tenancy agreement, the Landlord must prove the requirements prescribed by subsection 61(8) of the Act, which state:

Requirements for earlier period of notice

- (8) *The Director shall grant an application under subsection (7) only if the Director is satisfied that*
- (a) *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,*
 - (iii) *put the landlord's property at significant risk,*
 - (iv) *engaged in illegal activity that*
 - (A) *has caused or is likely to cause damage to the landlord's property,*
 - (B) *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*
 - (C) *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord,*
 - (v) *caused unreasonable damage to the residential property, or*
 - (vi) *frustrated the tenancy agreement; and*
 - (b) *it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice of termination under subsection (1) to take effect*

- [30] In Order LR24-11 the Island Regulatory and Appeals Commission (the “Commission”) made the following comments regarding earlier termination of a tenancy agreement:

“This appeal presents a very unique set of facts and the application of subsections 61.(7) and (8) are highly fact dependent. The onus is on a landlord to establish that the facts justify a termination of a tenancy agreement. The legislation allows for the termination of a tenancy agreement where a landlord receives a significant interference or an unreasonable disturbance from a person permitted on the residential property by the tenant.”

“Termination of a tenancy agreement is a very serious matter and the evidentiary bar must be set high where it is based on the actions of a person permitted on the property by the tenant...”

- [31] For the reasons below, the Officer finds that an earlier termination of the tenancy agreement is not warranted in these circumstances.
- [32] The Landlord and the Tenant’s relationship has deteriorated over the past few months. The Landlord’s position is that the Tenant has permitted men into the Rental Unit, which have disturbed her occupancy and quiet enjoyment. Further, Landlord stated that the Tenant’s guest and the Tenant have physically assaulted her and threatened her son. The Tenant has damaged the Landlord’s personal property.
- [33] The Officer notes that the Commission commented that terminating a tenancy agreement is a very serious matter, and the evidentiary bar is high for a landlord, specifically where the issue is the actions of a person permitted on the property by the Tenant.
- [34] In this case, the Landlord and the Tenant provided conflicting testimonies regarding the events outline above. The Officer makes the following findings:

Disturbance / Quiet Enjoyment

- [35] The Officer finds that the testimony provided by the parties establish that both the Landlord and the Tenant have exchanged and participated in verbal insults towards one another. The Officer finds that the Tenant’s actions and/or behaviour, and D.G.’s behaviour has unreasonably disturbed the Landlord’s occupancy and/or quiet enjoyment. However, the evidence does not establish that such disturbances justify the earlier termination of the tenancy agreement.

Illegal Activity, Jeopardize the health/safety, and the lawful right of the Landlord

- [36] There are two separate incidents that the Landlord is alleging, which would justify the earlier termination of the tenancy agreement.
- [37] The first incident was on August 8, 2024, where the Tenant’s guest (D.G.), entered the Rental Unit, and assaulted the Landlord and threatened the Landlord’s son with a knife. The Tenant stated that she did not witness the incident but was aware that D.G. was coming to the Rental Unit to pick her up. The Tenant stated that D.G. was told not to enter the Rental Unit.
- [38] The Tenant stated that D.G. was arrested for the incident, but was released with an ankle bracelet. The Tenant stated that D.G. will not be returning to the Rental Unit. The Tenant stated that she is not responsible for the altercation between D.G., the Landlord, and the Landlord’s son.

- [39] The Officer finds that the Landlord has not provided sufficient evidence to establish that the Tenant is responsible for the August 8, 2024 incident. The Landlord's son did not participate at the hearing to provide his witness testimony regarding the incident. Further, the Landlord did not submit a police report into evidence and did not submit the alleged no trespass order against D.G. into evidence. Based on these evidentiary deficiencies, the Officer finds that there is insufficient evidence to conclude that the Tenant permitted D.G. into the Rental Unit that day, and that the Tenant allowed or participated in the incident.
- [40] The second incident was on August 7, 2024 where the Landlord alleges that the Tenant pushed her into the door frame causing serious bruising on her arm and back. The Officer finds that the parties provided disputing testimony around the incident. However, the Officer finds that the Tenant in their testimony, did provide more detail and context regarding the incident.
- [41] The Officer finds that there was some physical altercation between the Landlord and the Tenant. However, the Officer finds that the Landlord has not provided sufficient evidence to corroborate her testimony surrounding the incident. The Officer finds that the Tenant was the one who called the police and no further action was taken by the police. Further, the Landlord was denied a protection order from the police after the incident in question. The Officer finds that this incident does not justify the earlier termination of the tenancy agreement.

Damage to the property

- [42] The Officer finds that the Tenant admitted to throwing two of the Landlord's jewelry boxes out the window. However, the Officer finds that this incident alone, does not justify the earlier termination of the tenancy agreement. Clause 61(8)(iii) contemplates the landlord's property being at significant risk. The Officer finds that the Tenant provided testimony, which provided context and reason for her choice to throw the Landlord's personal property out the window. The Tenant stated that she was apologetic for her actions. The Officer finds that this incident alone does not justify the earlier termination of the tenancy agreement, and the Application for earlier termination is denied.

Issue ii. Must the Tenant vacate the Rental Unit due to the Notice?

- [43] Despite the Officer finding insufficient evidence to earlier termination of the tenancy agreement, the Landlord did serve the Notice to the Tenant for the following reasons:
1. *You have not paid your rent in the amount of \$150.00;*
 2. *You or someone you have allowed on the property have disturbed, endangered others or put the landlord's property at significant risk;*
 3. *You or someone you have allowed on the property have engaged in illegal activity on the property; and*
 4. *You have failed to comply with a material term of the tenancy agreement despite written warning.*
- [44] For the reasons below, the Officer finds that the Notice is valid and the tenancy agreement shall terminate as detailed below.

Unpaid rent

- [45] The Officer finds that the Landlord provided additional documentary evidence to support that she was collecting \$600.00 for rent from social services. However, in July 2024 and August 2024 she only received \$525.00 from social services. The Tenant disputed the total amount, however, did not provide any additional evidence to support her position. The Officer finds that rent is \$600.00.

[46] The Landlord is seeking a rent owing claim, which is to be determined in another decision. The Officer finds that the Tenant owes \$150.00 in rental arrears. However, based on the testimony of the parties, the Officer finds that the tenancy agreement should not be terminated due to non-payment of rent. The Officer finds that the arrangement is that the Landlord collects the cheque each month from social services. The Tenant does not receive the money and does not directly pay the Landlord. The Tenant stated that she was not aware of the reduction and when the Landlord told her, she has reason not to believe the Landlord. The Tenant did not dispute that if she owes the money she will pay it. The Officer finds that the Tenant should have the opportunity to pay the rental arrears, and therefore this part of the claim is denied.

Disturbed, endangered others, and illegal activity

[47] The Officer finds that the Landlord has established that the Tenant's behaviour, actions and the Tenant's guests behaviour and actions have disturbed the Landlord's occupancy. The Officer finds that the two incidents mentioned above may not justify earlier termination of the tenancy agreement, however, these incidents do justify the termination of the tenancy agreement.

[48] The Officer finds that specifically, on August 7, 2024 the Tenant put their hands on the Landlord, which resulted in the Landlord receiving bruising. Further, on August 8, 2024 the Tenant's known guest (D.G.) arrived at the Rental Unit, which resulted in police being called and D.G. being arrested. This claim is proven.

[49] The Officer notes that the effective date of the Notice is August 25, 2024. This is correct if the tenancy agreement is terminated for non-payment of rent pursuant to section 60(1) of the Act. However, the Notice is valid due to subsections 61(1)(d) and (e) of the Act. This requires the effective date to be at least one months' notice and be the day before the day that rent is payable under the tenancy agreement. The Officer adjusts the effective date accordingly to 5:00 p.m. on September 30, 2024.

Breach of a material term

[50] Despite the Officer already finding valid ground to termination the tenancy agreement. The Officer notes that the Landlord has not provided sufficient evidence to prove that the Tenant breached a material term of the tenancy agreement. This claim is denied.

CONCLUSION

[51] The Application for earlier termination is denied.

[52] The tenancy agreement shall terminate effective 5:00 p.m. on September 30, 2024. The Tenant shall vacate the Rental Unit by this time and date.

IT IS THEREFORE ORDERED THAT

- I. **The tenancy agreement shall terminate effective 5:00 p.m. on September 30, 2024. The Tenant shall vacate the Rental Unit by this time and date.**
- II. **A certified copy of this order may be filed with the Supreme Court and enforced by Sheriff Services as permitted by the Act.**

DATED at Charlottetown, Prince Edward Island, this 19th day of August, 2024.

(sgd.) Cody Burke
Cody Burke
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.