

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On August 1, 2024, the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) disputing an *Eviction Notice (Form 4(A))* (the “Notice”). The Notice was served by a Landlord representative (the “Representative”) to the Tenant on July 31, 2024, effective September 1, 2024, for the following reasons:
- You or someone you have allowed on the property have disturbed, endangered others, or put the landlord's property at significant risk; and*
You or someone you have allowed on the property have engaged in illegal activity on the property.
- [3] On August 15, 2024, a Notice of Hearing was emailed to the parties.
- [4] On August 23, 2024, an evidence package was emailed to the parties.
- [5] On August 27, 2024, a teleconference hearing was held with the Tenant, the Tenant’s representative, the Representative, and the Residential Tenancy Officer (the “Officer”).
- [6] The Tenant notified the Officer prior to the hearing that she was unable to review the Landlord’s evidence. Before the hearing began, the Representative attended the Rental Unit and the Tenant was able to view the video the Representative had submitted into evidence. The Officer also read aloud the statement the Representative had submitted into evidence. The Tenant was satisfied with this review of the Landlord’s submitted evidence and understood the reason for the Notice.

ISSUE

- i. Must the Tenant and all occupants vacate the Rental Unit?

SUMMARY OF EVIDENCE

- [7] The Landlord and the Tenant entered into an oral month-to-month tenancy agreement for the Rental Unit in the summer of 2021. The Rental Unit is a motel room located in a multi-unit building (the “Residential Property”). Rent is \$824.00 due on the first day of the month. The Representative stated a security deposit of \$500.00 was paid and the Tenant stated she paid \$700.00.
- [8] The Landlord and the Tenant were parties to three earlier Rental Office decisions and one Island Regulatory and Appeals Commission decision, which are included in the Evidence Package. These decisions addressed three earlier attempts by the Landlord to end the tenancy.

Landlord’s Evidence and Submissions

- [9] The Representative’s evidence is summarized as follows.
- [10] On July 29, 2024, the tenant in another unit (T1), notified the Representative that the Tenant had thrown coffee at T1. The Representative stated that this action would be considered assault. The Representative stated that T1 was not available to participate in the hearing.

- [11] The Landlord submitted into evidence a copy of a statement written by T1, which was dated July 30, 2024. In the statement, T1 stated that on July 29, 2024, the Tenant asked T1 for beer and T1 refused to give any beer to the Tenant. The Tenant then threw warm coffee at T1 and T1 is scared that the Tenant may throw boiling water on T1. T1 stated the coffee went in T1's face and on the door and wall of the Residential Property.
- [12] The Representative submitted into evidence a surveillance video of the incident. In the video the Tenant can be seen throwing coffee at T1 and hitting T1 with the coffee. The video was date and time stamped July 29, 2024, at 11:25 am.

Tenant's Evidence and Submissions

- [13] The Tenant's evidence is summarized as follows. The Tenant was sitting outside of her Rental Unit drinking coffee and T1 was sitting outside of his Rental Unit drinking beer. Tenants are not allowed to be drinking alcohol outside of their units and the Tenant told T1 to go back inside with his beer. The Tenant stated that T1 called the Tenant a derogatory name. The Tenant then threw her coffee at T1 because of what T1 had said to her.
- [14] The Tenant agreed that she should not have thrown her coffee at T1. The Tenant stated that she has known T1 for a long time and that this would not be considered an assault or be a reason for eviction. The Tenant stated that this is the fifth time that the Representative has tried to evict her and she stated that she is being harassed by the Representative. The Tenant believes that the Representative wants to evict her so he can raise the rent for the Rental Unit.

ANALYSIS

Issue i: Must the Tenant and all occupants vacate the Rental Unit?

- [15] The reasons that the Landlord seeks to end the tenancy are pursuant to clauses 61.(1)(d) and (e) of the Act:

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

(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.

Illegal Activity

- [16] There are two elements to terminating a tenancy agreement pursuant to clause 61.(1)(e) of the Act. The first element a landlord must establish is an "*illegal act*." This means that the landlord must prove that the tenant engaged in a serious violation of a federal, provincial, or municipal law.
- [17] For the second element, the landlord must establish that the illegal activity was serious enough to have a harmful impact on the landlord's property, other occupants of the residential property, or the landlord. Both of these two elements must be proven in order to end a tenancy pursuant to clause 61.(1)(e).
- [18] The evidence establishes that the Tenant threw a cup of coffee at T1. However, T1 did not participate in the hearing to testify as to whether he considered this to be an act of assault. There was no evidence submitted that T1 or the Representative contacted police or that charges were laid against the Tenant because of this incident. Therefore, the Officer is unable to infer that the Tenant engaged in an illegal act based on the evidence provided.
- [19] As the Landlord has not established the first required element of an illegal act, it is unnecessary for the Officer to determine the second element. The Officer therefore finds that the Landlord has not established a breach of clause 61.(1)(e).

Disturbance

- [20] To establish a breach of clause 61.(1)(d) a landlord does not need to prove the same elements as a breach of clause 61.(1)(e). However, a landlord must establish that the tenant has significantly interfered with or unreasonably disturbed, or seriously jeopardized the health or safety or lawful right, of another occupant of the residential property.
- [21] As noted above, the Representative did not have T1 participate in the hearing to testify and to provide affirmed evidence regarding the coffee throwing incident. However, the Representative did submit into evidence a statement from T1 and a video which clearly depicted the incident. Furthermore, the Tenant did not deny the incident had occurred, but justified the reason she threw her coffee at T1.
- [22] Based on the evidence submitted, the Officer finds that the Landlord has established that the Tenant has breached clause 61.(1)(d) of the Act. The Officer notes that a tenant being called a derogatory name does not justify throwing coffee at another tenant. Therefore, 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 between the parties shall terminate effective 5:00 p.m. on September 9, 2024. The Tenant and all occupants must vacate the Rental Unit by this time and date.
- [25] This Order will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- A. The tenancy between the parties shall terminate effective 5:00 p.m. on September 9, 2024. The Tenant and all occupants must vacate the Rental Unit by this time and date.
- 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 29th day of August, 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 (the “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.