

**INTRODUCTION**

- [1] The Landlord seeks to end the Tenant's tenancy based upon a notice of termination. The Tenant disputes the termination of the tenancy agreement.
- [2] The Tenant seeks a determination that the Landlord breached the Tenant's right to reasonable privacy.

**DISPOSITION**

- [3] I find that the Landlord has not established a valid basis for ending the tenancy agreement.
- [4] I find that the Landlord has not breached the Tenant's right to reasonable privacy.

**BACKGROUND**

- [5] The Unit is an apartment in a multi-unit building (the "Residential Property").
- [6] The Tenant moved into the Unit in February 2022, pursuant to a written, fixed-term tenancy agreement with the Landlord. The tenancy agreement then continued as a month-to-month agreement. The rent for the Unit is \$1,595.50 per month, due on the first day of the month. The Tenant paid a \$1,550.00 security deposit to the Landlord.
- [7] On October 7, 2024, the Landlord served the Tenant with a *Form 4 (A) Eviction Notice* (the "Notice"), effective on November 7, 2024. I note that this effective date is automatically changed to November 30, 2024 pursuant to section 54 of the *Residential Tenancy Act* (the "Act") because the Landlord was required to provide the Tenant with a minimum of one full month's notice (see subsection 61(3)).
- [8] The Landlord seeks to terminate the tenancy agreement for disturbing or endangering others or putting the Landlord's property at significant risk.
- [9] The particulars of termination state:
- Complaints about smoking smell which heavily affects the health of other tenants, especially newborns and children. Smoking indoor which significantly increases the risk of fire.*
- [10] On October 7, 2024, the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") disputing the Notice. The Application also seeks a determination that the Landlord contravened the Tenant's right to quiet enjoyment. The Tenant served the Landlord the Application by email on October 10, 2024.
- [11] On October 11, 2024, the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for October 29, 2024.
- [12] On October 25, 2024, the Rental Office emailed the parties an evidence package.
- [13] On October 29, 2024, a teleconference hearing was held. The Tenant, a Landlord representative (the "Representative"), and two Landlord witnesses participated in the hearing. The parties confirmed they received the evidence package and all submitted documents were included.

**PRELIMINARY MATTERS**

- [14] During the hearing, the Representative stated that one of the reasons she was seeking termination of the tenancy agreement was because the Tenant has a cat in the Unit and pets are not allowed. I note that the matter of the cat in the Unit was not listed on the Notice as a reason for termination.
- [15] After the hearing I sent the parties a copy of the Island Regulatory and Appeals Commission (the "Commission") Order LR22-60. LR22-60 was issued after an October 20, 2022, hearing between the parties regarding a notice of termination. The Commission found that the Tenant having a cat in the Unit was not grounds for termination of the tenancy agreement.
- [16] After reviewing Order LR22-60, the Representative submitted that she was no longer seeking termination for the Tenant having a cat in the Unit. She stated she was still seeking termination for the other matters addressed during the hearing.

**ISSUES**

- A. Must the Tenant and all occupants vacate the Unit?
- B. Did the Landlord breach the Tenant's right to reasonable privacy?

**ANALYSIS****A. Must the Tenant and all occupants vacate the Unit?****Smoking**

- [17] The Representative stated the Tenant has been smoking in the Unit and the building is a non-smoking building. The Representative has received complaints from other tenants who stated they can smell smoke coming from the Unit. The Representative and one of the Landlord's witnesses were in the Unit on October 4, 2024, pursuant to a 24-hour notice, to remove a modem from the Unit.
- [18] Both the Representative and the witness stated they smelled cigarette smoke in the Unit. Photographs of one of the Tenant's garbage bags containing a cigarette package were submitted into evidence. The garbage bag was photographed outside on the Tenant's patio.
- [19] I have reviewed the evidence and I find that the Landlord has not established its claim for terminating the tenancy for smoking in the Unit.
- [20] In these cases, the Landlord has the burden to prove, on a balance of probabilities, its allegations against the Tenant. The Landlord did have witness testimony and direct testimony from the Representative regarding what they witnessed in the Unit on October 4, 2024. However, I find that the testimony provided only details of the smell of smoke in the Unit and a cigarette package in the Tenant's garbage. The Landlord did not offer any direct witness testimony that anyone witnessed the Tenant smoking in the Unit.
- [21] I find that the witness testimony alone does not establish that the Tenant was smoking in the Unit. The Tenant provided evidence disputing the allegation. The Tenant provided alternative reasons as to why the smell of smoke may be in the Unit and why the cigarette package was in the garbage. Therefore, I find that the Landlord has not established smoking as a valid reason to terminate the tenancy agreement.

**Access to the Unit**

- [22] The Representative stated she attended the Unit on October 4 and 7, 2024, pursuant to 24-hour notices. Both times she attended the Unit she was unable to open the front door and she had to use the patio door to enter the Unit. She stated it was not an issue with the lock and the Tenant must have done something to block the door from opening. She could not see anything blocking the door from the inside the Unit and she does not know why the door would not open. The Tenant was not at home either time to address this matter.
- [23] The Tenant denied doing anything to restrict the front door from opening and stated that the door works fine. The Tenant stated that he put a strip of tape across the bottom of the door to block out cockroaches. The Tenant agreed to allow the Representative to attend the Unit after the hearing to inspect the door.
- [24] After the hearing, the Representative emailed the Rental Office and stated that she had attended the Unit and inspected the door. She stated that "*the door was unblocked on October 29, 2024, at 6:00 p.m.*" The Representative stated she was still seeking termination of the tenancy agreement because the Tenant had blocked the door on October 4 and 7, 2024.
- [25] I find that the Representative has not provided sufficient evidence to establish that the Tenant has contravened subsection 61(1)(d) of the Act. The parties had conflicting evidence as to whether the Tenant had intentionally restricted the door from being able to be opened. Even after being in the Unit twice, the Representative was not able to state what was restricting the door from being opened. On October 29, 2024, the Representative confirmed the door was not restricted.
- [26] I find that based on the submitted evidence that the Representative has not established a valid basis for termination of the tenancy agreement.

**B. Did the Landlord breach the Tenant's right to reasonable privacy?**

- [27] The Tenant stated the Representative entered the Unit on October 4, 2024, without first providing at least 24-hours' notice. He denied receiving a copy of the notice that the Representative stated she posted on the door of the Unit on October 3, 2024. The Tenant stated the Representative took photographs inside the Unit, but he was not notified there would be an inspection of the Unit.
- [28] The Representative stated she posted a notice on Unit's door on October 3, 2024, which stated that she would be entering the Unit on October 4, 2024, to remove a modem. A photograph of the notice posted on the Unit's door was submitted into evidence. The Representative stated she observed a broken oven door when in the Unit and she took a photograph of the damage.
- [29] I find that the Tenant has not established that the Representative has contravened the Tenant's right to quiet enjoyment. I am satisfied that evidence shows that the Representative provided the Tenant with at least 24-hours' notice that she was going to be entering the Unit on October 4, 2024.
- [30] Regarding taking photographs when in the Unit, in Order LR24-30 the Commission was critical of a landlord taking a video in a unit without the tenant's consent or knowledge. I note that the best practice is for a landlord to provide a tenant with at least 24-hours' notice that they will be entering a unit for an inspection and photographs of the unit may be taken at that time.

**CONCLUSION**

[31] The Notice is invalid and the Application is allowed.

[32] The tenancy agreement will continue and the Tenant can continue to live in the Unit.

[33] The Landlord has not breached the Tenant’s right to reasonable privacy.

**IT IS THEREFORE ORDERED THAT**

1. The tenancy agreement will continue and the Tenant can continue to live in the Unit.

**DATED** at Charlottetown, Prince Edward Island, this 1st day of November, 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 **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.