

**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.

**DISPOSITION**

- [2] I find that the Landlord has not established a valid basis for ending the tenancy agreement.

**BACKGROUND**

- [3] The Unit is an apartment in a multi-unit building (the "Residential Property").
- [4] The Tenant moved into the Unit on November 1, 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 \$453.24 per month, due on the first day of the month. The Tenant paid a \$450.00 security deposit to the Landlord.
- [5] On September 17, 2024, the Landlord served the Tenant with a *Form 4 (A) Eviction Notice* (the "Notice"), effective on October 18, 2024. The Notice was served for the following reasons:
- You or someone you have allowed on the property has caused damage to the rental unit;  
You have not repaired damage to the rental unit; and  
You have failed to comply with a material term of the tenancy agreement.*
- [6] I note that this effective date is automatically changed to October 31, 2024, under 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 and be served the day before rent is due (clause 61(3)).
- [7] On September 26, 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.
- [8] On October 8, 2024, the Rental Office emailed the parties notice of a teleconference hearing scheduled for October 22, 2024.
- [9] On October 18, 2024, the Rental Office emailed the parties an evidence package.
- [10] On October 22, 2024, the Landlord requested that the hearing be rescheduled to allow additional time to submit more evidence. I granted the request and told the parties the hearing would be rescheduled.
- [11] On October 24, 2024, the Rental Office emailed the parties notice of a re-scheduled teleconference hearing for November 12, 2024.
- [12] On November 8, 2024, the Rental Office emailed the parties a revised evidence package.
- [13] On November 12, 2024, a teleconference hearing was held. The Tenant and three Landlord representatives ("LR1," "LR2," and "LR3") participated in the hearing. The parties confirmed they received the evidence packages and all submitted documents were included.
- [14] After the hearing the Landlord was permitted additional time to submit further evidence. On November 18, 2024, LR2 advised the Rental Office that the Landlord was not submitting any further evidence.

**ISSUE**

- A. Must the Tenant and all occupants vacate the Unit?

**ANALYSIS**

- [15] The Landlord's first two reasons for ending the tenancy are under clauses 61(1)(f) and (g) of the Act which state:

*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;*

*(g) the tenant does not repair damage to the rental unit or residential property, as required under section 28(4), within a reasonable time.*

**Smoking**

- [16] The Representatives stated that the Tenant is smoking in the Unit and the smoke has caused damage to the Unit. The Unit will have to be cleaned and re-painted to remove the damage caused by the smoke before another tenant can move in.
- [17] The Tenant stated she had been smoking in the Unit but is now smoking outside.
- [18] I find that the Landlord has not provided sufficient evidence, such as photographs or repair invoices, to establish that the Tenant has caused unreasonable damage to the Unit by smoking. I note that the Landlord did submit some photographs of the Unit into evidence, however none of the photographs show any smoke damage. I further find that as the Landlord has not established the Tenant has caused unreasonable damage to the Unit, the Landlord has also not established the Tenant has failed to repair the alleged damage.

**Cockroaches**

- [19] The Representatives stated the Unit is unclean and this has caused a cockroach infestation. The Unit has been treated for cockroaches but the Tenant refuses to clean properly and the cockroaches cannot be completely eradicated. Photographs of the Unit, an Affidavit from LR1, and a message from a pest control company to a property representative were submitted into evidence.
- [20] The Tenant stated a cleaner has been hired to clean the Unit every month and the Unit is in better condition now than before.
- [21] I find that the Landlord has not provided sufficient evidence to establish that the Tenant has caused unreasonable damage to the Unit by causing a cockroach infestation. I further find that as the Landlord has not established the Tenant has caused unreasonable damage to the Unit, the Landlord has also not established the Tenant has failed to repair the alleged damage.
- [22] The message from the pest control company stated there were cockroaches in the Unit, however there is no evidence establishing that the Tenant was the sole cause of the infestation or if other units were also infested. The message listed some actions to be completed to assist in dealing with the infestation, however, no evidence was submitted to establish that the Landlord had notified the Tenant of these necessary actions.

- [23] LR1's Affidavit stated that he contacted the Landlord on August 9, 2024, as he noted the Unit was unclean and cockroaches were present in the Unit. However, LR1's Affidavit and testimony did not establish the date he was in the Unit or if the Tenant had been provided with at least 24 hours' notice prior to the inspection. LR1's Affidavit stated the Tenant had not taken "*any action to repair the damage inside the apartment,*" however no evidence was submitted of when or how the Tenant was notified to "*repair the damage.*"
- [24] The Representatives submitted photos of the Unit into evidence, however, no evidence was submitted to establish the date the photos were taken. No evidence was submitted to establish that the Tenant was provided with at least 24 hours' notice of an inspection or that photos would be taken inside the Unit.
- [25] The Tenant stated that a cleaner has been hired to clean the Unit and it is in better condition than before. During the hearing the Representatives stated they would provide the Tenant with 24-hours' notice for an inspection to establish the current condition of the Unit. The Representatives stated they would submit the results of the inspection to the Rental Office after it had been completed. On November 18, 2024, LR2 notified the Rental Office that the Landlord would not be submitting any further evidence regarding this matter. I note that an update on the current condition of the Unit would have been of assistance in the determination of this matter.
- [26] For these reasons, I find that the Landlords' first two reasons for ending the tenancy are not valid.

**Material Term**

- [27] The Landlord is also seeking to terminate the tenancy for a third reason under clause 61(1)(h) of the Act, which states:
- A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*
- (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.*
- [28] LR1 stated he has been in the Unit on several occasions and the Unit is unclean and always smells like cigarette smoke. LR1 has given the Tenant several oral warnings and at least two written warnings to clean the Unit and to stop smoking in the Unit. LR1 stated the Tenant has not complied with the warnings and the Unit is still unclean and the Tenant still smokes in the Unit.
- [29] The Representatives stated the Residential Property is a non-smoking building. The Representatives are concerned about second-hand smoke affecting other tenants in the building and stated that smoking is a fire hazard. A copy of the tenancy agreement was submitted into evidence which states that smoking is not allowed in the Unit.
- [30] The Tenant stated she had been smoking in the Unit but has recently started smoking outside and the Representatives will be able to see her outside on the building's security cameras. A cleaner has been hired to clean the Unit every month and the Unit is in a better condition than before.
- [31] During the hearing I asked the Representatives to provide me with copies of any written notices they had given to the Tenant regarding these alleged breaches. On November 18, 2024, LR2 notified the Rental Office that the Landlord was not submitting any further evidence regarding this matter.

[32] I find that the Landlord has not provided sufficient evidence to establish that the Tenant was given written notice of a breach of a material term of the tenancy agreement, as required by the Act. I find that the Landlord's third reason for ending the tenancy is not valid.

**CONCLUSION**

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

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

**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 20th day of November, 2024.

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(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.