

## INTRODUCTION

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

## DISPOSITION

- [3] The Landlord has not established a valid basis for ending the tenancy agreement.

## BACKGROUND

- [4] The Unit is an apartment in a multi-unit building (the "Residential Property").
- [5] The Tenant moved into the Unit early on November 21, 2024, under a written fixed-term tenancy agreement with the Landlord, effective December 1, 2024, to November 30, 2025. The rent for the Unit is \$1,103.82, due on the first day of the month. A security deposit of \$539.50 has been paid.
- [6] On November 28, 2024, the Landlord served the Tenant with a *Form 4 (A) Eviction Notice* (the "Notice"), effective January 3, 2025.
- [7] The Landlord seeks to terminate the tenancy agreement for the following reasons:

*You or someone you have allowed on the property have disturbed or endangered others or put the Landlord's property at significant risk;  
You have failed to comply with a material term of the tenancy agreement despite written warning.*

The particulars state:

*"You continually smoke on the property despite having signed a no smoking agreement and verbal and written warnings."*

- [8] R1 should have included the correct legal name of the corporate landlord and the unit number on the Notice. The Notice is amended to correct these errors.
- [9] On December 4, 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.
- [10] On December 10, 2024, the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 2, 2025.
- [11] On December 19, 2024, the Rental Office emailed the parties a 60-page evidence package.
- [12] On January 2, 2025, a teleconference hearing was held. The Tenant, two Tenant witnesses (TW1 and TW2), and three Landlord representatives (R1, R2, and R3) participated in the hearing. The parties confirmed they received the evidence package, and all submitted documents were included.

## ISSUE

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

**ANALYSIS**

- [13] R1 stated that the Tenant has been smoking on the Residential Property and possibly in the Unit, but smoking is prohibited on the property. R1 stated that other tenants have been complaining about the smell of smoke in their units. R1 stated the Tenant had been given a written warning about smoking on the property. Statements from two complaining tenants were submitted as evidence.
- [14] R1 acknowledged that one part of the tenancy agreement states that the Residential Property is smoke-free, but another part states that the Tenant must be 15 feet away from the building when smoking. R1 stated that the part about smoking 15 feet away was included in error. R1 stated that the ashtray near the front door was there to remind visitors to put out their cigarettes and that it was not a smoking area.
- [15] R2 and R3 stated that TW1 told them that the Tenant was on the patch before the Tenant moved in. R2 and R3 had believed the Tenant was not currently smoking. R2 and R3 denied telling the Tenant where he could smoke, as it did not come up in the conversation. R2 stated that after the Tenant was warned not to smoke on the property, he no longer smokes on the property.
- [16] The Tenant stated that before he moved in, R3 told him he could smoke fifteen feet from the building, which the tenancy agreement also states. The Tenant stated that he was later told he could not smoke anywhere on the property. The Tenant stated after he was told he could not smoke on the property, he now smokes off the property. The Tenant denied smoking in the Unit.
- [17] TW1 stated she did not tell R2 and R3 that the Tenant was on the patch but that the Tenant was considering going on the patch. TW1 stated that R3 showed the Tenant where he was allowed to smoke and that R3 pointed next to the main door where the ashtray was. TW1 stated that the Tenant stopped smoking on the property after he was told not to.
- [18] The Landlord served the notice under clauses 61(1)(d) and (h) 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:*
- (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.*
  - (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.*

**Disturbing Others**

- [19] R1 stated that he has been receiving complaints from other tenants about the Tenant smoking near the building. The complaining tenants have stated they can smell smoke in their units, and the smell is disturbing them. However, the parties agreed that the Tenant stopped smoking on the property after being warned by the Landlord. There is insufficient evidence to establish that the tenant is currently the cause of any smell in the building.

- [20] R1 provided a statement from the tenant living above the Unit. The complaining tenant believes the Tenant is smoking in the Unit because she can smell smoke in her unit. However, the complaining tenant was not a witness at the hearing.
- [21] When a landlord is evicting a tenant for cause, the best practice is for a landlord to have the affected persons participate in the hearing. The parties or witness would affirm to tell the truth, provide their testimony, and be available to answer questions regarding their evidence. I note that the participation of the complaining tenant at the hearing may have assisted in determining this matter.
- [22] I find that the Landlord has not provided sufficient evidence to establish that the Tenant has contravened clause 61(1)(d) of the Act.

**Material Term**

- [23] R1 stated the Tenant breached a material term of the tenancy agreement by smoking on the Residential Property. If a landlord seeks to terminate a tenancy for a breach of a material term of the tenancy agreement, the landlord would first be required to provide the tenant with a written warning of the breach. The landlord would also be required to give the tenant a reasonable time to correct the situation after being given the written notice.
- [24] R1 stated that the Tenant was given a written warning about smoking on the Residential Property before being served the Notice. However, the Landlord did not submit a copy of the written warning as evidence. Furthermore, the parties agreed that the Tenant stopped smoking on the Residential Property after being spoken to by the Landlord.
- [25] As noted above, there is also insufficient evidence to establish the Tenant is smoking in the Unit.
- [26] I find that the Landlord has not provided sufficient evidence to establish that the Tenant has contravened clause 61(1)(h) of the Act.

**IT IS THEREFORE ORDERED THAT**

1. The Notice is invalid, and the Application is allowed.
2. The tenancy agreement will continue, and the Tenant can continue to live in the Unit.

**DATED** at Charlottetown, Prince Edward Island, this 8th day of January, 2025.

(sgd.) Mitch King

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**Mitch 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.