

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

BACKGROUND

- [4] The Unit is an apartment in a four-unit building (the "Residential Property") owned by the Landlord.
- [5] On October 7, 2024, the Tenant and Landlord entered into an oral, month-to-month tenancy agreement. The rent for the Unit is \$690.00, due on the first day of the month. A security deposit of \$690.00 was paid at the beginning of the tenancy.
- [6] The Landlord stated he served the Tenant with a *Form 4 (A) Eviction Notice* (the "Notice") on November 3, 2024, effective December 3, 2024, by email. The Landlord seeks to terminate the tenancy agreement for the following reason:

You or someone you have allowed on the property have disturbed or endangered others.

- [7] The Landlord was unsure if the Tenant received the Notice by email, so the Landlord had a representative post a copy on the Unit's door on November 20, 2024. The Tenant stated she did not receive a copy of the Notice until November 20, 2024.
- [8] I find that the Notice was served on November 20, 2024. As the parties do not have a written tenancy agreement, there is insufficient evidence to establish what email address, if any, the Tenant had provided to the Landlord for service of documents under clause 100(1)(d) of the *Residential Tenancy Act* (the "Act").
- [9] I note that the effective date is automatically changed to December 31, 2024, under section 54 of the Act because the Landlord was required to provide the Tenant with a minimum of one full month's notice and serve the Notice the day before rent is due (clause 61(3)).
- [10] On November 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.
- [11] On December 18, 2024, the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 9, 2025.
- [12] On January 3, 2025, the Rental Office emailed the parties an evidence package.
- [13] On January 9, 2025, a teleconference hearing was held. The Tenant, a Tenant witness, the Landlord, and two Landlord witnesses (LW1 and LW2) 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

- [14] The Landlord stated that the Tenant has been smoking in the Unit, and the smoke is disturbing the tenants (LW1 and LW2) who live above the Unit. The Landlord stated that the Residential Property is a non-smoking building, and he told the Tenant about this before she moved in. The Landlord stated he had warned the Tenant several times about smoking in the Unit.
- [15] The Landlord stated that other tenants have complained about the Tenant having guests at the Unit at all hours and that fights occur with the guests, which disturbs the other tenants. The Landlord stated he has tried to get police to serve a no-trespassing notice to one of the Tenant's guests for causing disturbances, but he does not know if it has been served. The Landlord stated he had warned the Tenant several times about her guests disturbing others.
- [16] LW1 and LW2 stated that they live above the Tenant and can smell cigarette and marihuana smoke coming from the Unit. LW1 stated she has health issues, which make second-hand smoke dangerous to her health, and it makes her cough. LW1 and LW2 stated that the Tenant also uses some air fresheners to mask the smell of smoke, which also disturbs them. LW1 stated that her bedroom is directly above the Unit, and LW1 often has to sleep in the living room because of the smoke coming from the Unit. LW1 and LW2 cannot use their heat pump as it blows the smoke into LW1's bedroom.
- [17] LW1 and LW2 stated that the Tenant has guests visiting the Unit at all hours, and the guests often hang out in the hallway. The tenants in the building try to keep the main door locked during the night, but the Tenant will unlock the door to allow her guests to enter the building. The main door has also been left open because of the Tenant and her guests, which makes the building cold.
- [18] The Tenant stated that she smokes in her Unit "the odd time." The Tenant stated that some of her guests may smoke in the Unit when she is not there. The Tenant denied that her guests were disturbing other tenants. The Tenant stated that she does not have people visiting at all hours, and it is often family members who visit her.
- [19] The Landlord served the Notice under clause 61(1)(d) 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:*
- (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.

Smoking

- [20] The Landlord stated that there is only an oral tenancy agreement between the parties, and no written tenancy agreement exists. Since April 8, 2023, when the Act came into force, landlords have been required to prepare written agreements for all new tenancies. Subsection 11(1) of the Act states:
- A landlord shall prepare a written tenancy agreement in respect of a tenancy that is entered into on or after the date this Act comes into force.*
- [21] Subsection 11(2) also sets out the formal requirements of a written tenancy agreement to ensure the agreement complies with the Act.

- [22] The Act required the Landlord to have the Tenant sign a written tenancy agreement before moving into the Unit; however, the Landlord failed to do so. The absence of a written tenancy agreement raises the question of whether the Tenant is, in fact, prohibited from smoking in the Unit. One of the many benefits of having a written tenancy agreement is clarity of the terms agreed upon by a landlord and a tenant.
- [23] The Landlord must use a tenancy agreement form that complies with the Act. The Rental Office's *Standard Form of Tenancy Agreement (Form 1)* is available online in the Forms section of the Rental Office's website.
- [24] The Landlord stated that he told the Tenant that smoking was prohibited on the Residential Property. However, I find that the Landlord has not provided sufficient evidence to establish when he may have told the Tenant about the smoking prohibition, such as before or after the tenancy was entered into. There is also insufficient evidence that the Tenant has been provided with any written warnings about smoking in the Unit.

Disturbing Others

- [25] LW1 and LW2 stated they are concerned about the number and frequency of guests who visit the Unit. The Landlord stated he was also trying to have a no-trespass order served to a Tenant's guest who caused disturbances. However, I find that the Landlord has not provided sufficient evidence to establish how the Tenant's visitors have significantly interfered with or unreasonably disturbed other tenants or the Landlord or when this may have occurred.
- [26] LW1 and LW2 stated that the Tenant unlocks the front door to let her guests in, and sometimes it is left unlocked or open. However, the evidence establishes that the front door is locked and unlocked by tenants when they choose, and there is no evidence that the door must be locked at certain times. There is also insufficient evidence to establish whether the Tenant or her guests left the front door open or when this may have occurred.

Eviction Notice

- [27] I also note that the Landlord did not use the current version of the *Form 4(A) Eviction Notice*. Clause 53(f) of the Act states:

In order to be effective, a notice of termination shall be in writing and shall

(f) when given by a landlord, be in the approved form.

- [28] In the current version, there is a section where a landlord provides the "*Particulars of termination*" so a tenant can be notified of the specific reasons for eviction. In this case, the Landlord did not document any particulars on the Notice.
- [29] I find that the Landlord has not provided sufficient evidence to establish the Tenant has breached clause 61(1)(d) of the Act.
- [30] The Notice is invalid and the Application is allowed. The tenancy between the Landlord and the Tenant will continue in full force and effect.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the Landlord and the Tenant will continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 17th day of January, 2025.

(sgd.) Mitch King

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.