

**INTRODUCTION**

[1] The Tenants filed an application disputing a *Form 4(A) Eviction Notice*.

**DISPOSITION**

[2] I find that the Tenants and all occupants must vacate the Unit for repeatedly late rent payments.

**BACKGROUND**

[3] The parties entered into a written, fixed-term tenancy agreement for the Unit for the period of September 1, 2023 to August 31, 2024 which converted to a month-to-month tenancy. A security deposit of \$2,990.00 was paid on August 13, 2023. Rent of \$3,079.70 is due on the first day of the month.

[4] On December 11, 2024 the Landlord served the Tenants with a *Form 4(A) Eviction Notice* with an effective date of December 31, 2024 (the "Notice") for non-payment of rent of December 2024 rent and repeatedly late paying rent.

[5] On December 20, 2024 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office").

[6] On December 23, 2024 the Tenants filed another *Form 2(A) Tenant Application to Determine Dispute* with the Rental Office seeking a return of rent due to an unlawful rent increase. That application is the subject of Order LD25-020.

[7] On December 30, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for January 16, 2025.

[8] On January 9, 2025 the Rental Office emailed the parties a 25-page PDF document (the "Evidence Package" or "EP"). The Landlord submitted additional evidence which included a one-page submission and a copy of the tenancy agreement (the "Additional Evidence").

[9] On January 16, 2025 the Landlord and one of the Tenants (the "Tenant") joined the teleconference hearing for determination of the Applications. The Tenant was representing the Tenants at the hearing. The parties confirmed receipt of the Evidence Package and the Additional Evidence and that all documents submitted to the Rental Office were included.

**ISSUE**

i. Must the Tenants vacate the Unit?

**ANALYSIS**

[10] The Landlord's reasons in the Notice for terminating the tenancy are under clauses 60(1) and 61(1)(b) of the *Residential Tenancy Act* (or the "Act"), which state:

*A landlord may end a tenancy if rent is unpaid after the day it is due, by giving a notice of termination effective on a date that is not earlier than 20 days after the date the tenant receives the notice.*

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

*the tenant is repeatedly late in paying rent.*

**Non-payment of December 2024's rent**

- [11] For the reasons below, I find that the non-payment of December 2024's rent part of the Notice is invalidated.
- [12] The Tenants were responsible for paying December 2024's rent to the Landlord by December 1, 2024. The Landlord served the Notice to the Tenants on December 11, 2024. The Tenants paid December 2024's rent on December 20, 2024.
- [13] Clause 60(4)(a) of the Act states:
- Within 10 days after receiving a notice of termination under this section, the tenant may (a) pay the overdue rent, in which case the notice of termination has no effect.*
- [14] I find that the Tenants paid December 2024's rent within ten days of receiving the Notice. Therefore, by operation of law, the non-payment of rent part of the Notice is invalidated.

**Repeatedly late paying rent**

- [15] For the reasons below, I find that the Landlord has established that the Tenants are repeatedly late paying rent, which warrants the termination of the tenancy agreement.
- [16] The Landlord stated that the Tenants are repeatedly late paying rent. Whenever the Tenants are late the Landlord would text message the Tenants a reminder that rent was due. The Landlord stated that she would have to sometimes send multiple text messages to the Tenants. The Landlord stated that she was flexible with the Tenants and did not mind if the Tenants were late paying rent by a few days.
- [17] The Landlord stated that after the Tenants were late paying November 2024's rent she indirectly warned the Tenants that she may have to serve an eviction notice if they are late paying rent again.
- [18] The Landlord and the Tenant did not dispute the rent payments described below:

Rent Due	Date Paid	Status
July 1, 2024	July 19, 2024	Late
August 1, 2024	August 1, 2024	On Time
September 1, 2024	September 1, 2024	On Time
October 1, 2024	October 5, 2024	Late
November 1, 2024	December 3, 2024	Late
December 1, 2024	December 20, 2024	Late
January 1, 2025	December 31, 2024 and January 1, 2025	On Time

- [19] The Tenant did not dispute paying the rent late and provided the reasons for the late rent payments.
- [20] I find that the Landlord has established that the Tenants have been repeatedly late paying rent. Particularly, I find that the Tenants have been late paying the rent for October, November and December 2024.

[21] I note that the Act does not define what “repeatedly” means. However, in this case, I find that the Tenants have been late paying the rent for three consecutive months. Despite the Tenants providing reasons for the late payments, I find that the Act does not permit the Tenants any reasons for paying rent late.

[22] In Order LD25-020, I found that the Landlord has not complied with the Act and unlawfully increased the rent. Despite this finding of the Landlord’s non-compliance, it does not provide the Tenant with an exception to pay rent late. Subsection 19(1) of the Act states:

*A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.*

[23] Therefore, I find that the Landlord has a valid reason for terminating the tenancy agreement.

[24] The Notice is valid and the Application is denied.

**The Effective Date**

[25] The effective date on the Notice is December 31, 2024.

[26] The effective date on the Notice was in accordance to the reason for terminating the tenancy under clause 60(1) of the Act. However, I have found that the tenancy is terminated under clause 61(1)(b) of the Act. Therefore, the effective date is automatically changed under subsection 54(1) of the Act.

[27] The correct effective date is 5:00 p.m. on January 31, 2025.

[28] The Tenants and all occupants must vacate the Unit by the timeline below.

**IT IS THEREFORE ORDERED THAT**

1. The tenancy agreement between the parties will terminate effective **5:00 p.m. on January 31, 2025**.
2. The Tenants and all occupants must vacate the Unit by this time and date.
3. 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 17th day of January, 2025.

(sgd.) Cody Burke

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**Cody Burke**  
**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.