

INTRODUCTION

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

DISPOSITION

[2] I find that the tenancy agreement remains in full force and effect.

BACKGROUND

[3] The Unit is a one-bedroom apartment in a six-unit building (the "Residential Property").

[4] On December 1, 2024 the parties entered into a written, fixed-term tenancy agreement for the period of December 1, 2024 to November 30, 2025. A \$1,227.60 security deposit was paid. Rent is \$1,227.60 due on the first day of the month.

[5] On January 25, 2025, the Landlord's representative (the "Landlord's Representative") served the Tenant with a *Form 4(A) Eviction Notice* with an effective date of February 27, 2025 (the "Notice") for disturbing others and failing to comply with a material term of the tenancy agreement. The correct effective date is February 28, 2025, which automatically changed under section 54 of the *Residential Tenancy Act* (or the "Act").

[6] On January 29, 2025 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.

[7] On February 3, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for February 20, 2025.

[8] On February 14, 2025 the Rental Office emailed the parties a 69-page PDF document (the "Evidence Package" or "EP").

[9] On February 19, 2025 the Tenant submitted 3-pages of additional evidence which was provided to the Representative.

[10] On February 20, 2025 the Tenant, the Tenant's representative (the "Tenant's Representative") and the Landlord's Representative joined the teleconference hearing for determination of the Application. The parties confirmed receipt of the Evidence Package.

[11] After the hearing the Representative submitted 4-pages of additional evidence which was provided to the Tenant. Collectively, the Tenant's and the Landlord's additional evidence is referred to as the "Additional Evidence."

ISSUE

i. Must the Tenant vacate the Unit?

ANALYSIS

[12] The Landlord's reasons for terminating the tenancy agreement in the Notice is for behaviour disturbing others (clause 61(1)(d) of the Act) and failure to comply with a material term of the tenancy agreement (clause 61(1)(h) of the Act).

[13] The Landlord has the burden of proof to provide evidence on the civil standard of a balance of probabilities that at least one of the grounds in subsections (d) or (h) has been met.

- [14] I note that the Evidence Package includes two copies of the Notice. The first copy of the Notice is unsigned (EP5). The Landlord's Representative stated that this copy was posted to the entrance of the Unit. However, a second copy of the Notice was signed and emailed to the Tenant (EP26). A signature from a landlord or an authorized representative of a landlord on an eviction notice is necessary for its validity under section 53 of the Act.
- [15] The Landlord's Representative claims that the Tenant and/or the Tenant's guests have done the following:
- Excessive and loud noise;
 - Foot traffic coming and going from the Unit late into the night;
 - Bicycles left in the common area hallways; and
 - Breaching the tenancy agreement by allowing others to reside in the Unit.

I note the Landlord's Representative brought up other concerns about the Tenant, however, those other concerns were not included in the reasons for terminating the tenancy agreement.

- [16] The Landlord's Representative stated that about a month into the Tenant's tenancy he started receiving noise complaints from other tenants in the Residential Property. Written complaints were submitted into the Evidence Package and Additional Evidence. The summary of the complaints were bicycles being frequently left in common areas, loud yelling coming from the Unit, the smell of marijuana, and foot traffic late into the evening disturbing sleep.
- [17] The Landlord's Representative provided in the Additional Evidence a copy of the Schedule "D" from the tenancy agreement, with the Tenant's initials. The Landlord's Representative stated that the Tenant has allowed others to reside in the Unit, specifically two males. Clause 4 of Schedule "D" states: "*Only those named on the rental contract are permitted to reside in the unit.*" The Landlord's Representative stated that he served the Tenant a previous eviction notice for the same reasons on the Notice. The previous eviction notice was withdrawn and used as a warning (EP23).
- [18] The Tenant and the Tenant's Representative disputes that the Landlord has valid grounds for ending the tenancy. In summary, the Tenant's Representative provided direct evidence about her experience visiting the Residential Property. As part of her job she visits the Tenant regularly at the Residential Property. The Residential Property is often loud, with noises from other rental units. There are numerous other bicycles stationed in the common areas which are clearly not owned by the Tenant or her guests. There is no evidence to pinpoint the noises in the Residential Property and that the Tenant is being treated unfairly.
- [19] The Tenant stated that she does have two friends who visit her at the Unit. The Tenant stated that they do not reside in the Unit, but they may stay late from time-to-time. The Tenant stated that due to the complaints she has received from the Landlord's Representative, she reminded her friends to be quiet when entering and leaving the Unit. The Tenant stated that moving forward she will ask her friends to leave the Unit earlier in the evening to not disturb others late at night.
- [20] The Tenant and the Tenant's Representative brought up concerns regarding two cameras installed in the Residential Property directly focused on the Unit's two entrances.
- [21] I have reviewed the evidence and my findings are as follows.
- [22] In Order LR24-64 the Island Regulatory and Appeals Commission made the following comment regarding a landlord ending a tenancy (para. 21):

"The termination of a tenancy is a serious matter and accordingly a Landlord seeking to evict a tenant must put forward compelling evidence..."

- [23] I find that the Landlord has not provided compelling evidence significant enough to warrant the termination of the tenancy.
- [24] The Landlord's Representative did not directly witness the alleged behaviour and he relayed the complaints that he had received from the other tenants in the Residential Property. The Landlord's Representative did not bring any complaining tenant witnesses to provide direct evidence to the hearing. Having the complaining tenant witnesses testify regarding their complaints against the Tenant would have assisted in the determination of this matter.
- [25] Further, I find that the Tenant and her representative denied the Landlord's reasons for terminating the tenancy and the Tenant's Representative provided direct evidence of her experience while visiting the Residential Property which contradicted the Landlord's evidence.
- [26] The evidence provided shows that there have been complaints from other tenants in the Residential Property about noise. However, the evidence does not establish that the noise and alleged behaviour is from the Tenant and/or the Tenant's guests. Therefore, the Landlord has not established this claim as a valid reason for terminating the tenancy.
- [27] The Tenant has denied anyone else residing in the Unit. The Landlord has not provided sufficient evidence to establish that the Tenant has breached a material term of the tenancy agreement. The evidence suggests that a guest of the Tenant for a period of days was coming and going from the Unit at different hours of the day and night. However, this does not establish that this individual is residing in the Unit. Further, I note that the Landlord's Representative stated that he inspected the Unit prior to the date of the hearing. There was no evidence presented to determine that anyone other than the Tenant was residing in the Unit as it is a one-bedroom apartment.
- [28] For all the reasons provided, I find that the Notice is invalid and the Application is allowed.
- [29] The tenancy agreement between the parties will continue in full force and effect.
- [30] **I remind the Tenant that the Landlord has no tolerance for the issues identified. The Tenant should be wary of her guests and the hours that they may visit. Further complaints of noise and disturbances may result in the termination of the tenancy.**

IT IS THEREFORE ORDERED THAT

1. The tenancy agreement between the parties will continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 21st day of February, 2025.

(sgd.) Cody Burke

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 **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.