

INTRODUCTION

- [1] The Landlord served the Tenant with an eviction notice and filed an application with the Residential Tenancy Office (the "Rental Office") to evict the Tenant from the Unit.

DISPOSITION

- [2] I find that the eviction notice is invalid and the Landlord's application is denied. The tenancy agreement will continue and the Tenant can continue to live in the Unit.

BACKGROUND

- [3] The Unit is a two-bedroom, one-bathroom apartment in a nine-unit building (the "Residential Property") that the Landlord has operated for about 40 years.
- [4] On August 1, 2023 the parties entered into a written, month-to-month tenancy agreement (the "Tenancy Agreement"). A security deposit was not required. Rent is \$455.00 due on the first day of the month.
- [5] On January 7, 2025, the Landlord had the Tenant served with a *Form 4(A) Eviction Notice* with an effective date of February 28, 2025 (the "Notice") because of the number of occupants in the Unit and the behaviour of the Tenant and her guests. No particulars of termination were provided in the Notice.
- [6] On March 4, 2025 the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") with the Rental Office to evict the Tenant from the Unit.
- [7] On March 7, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for March 18, 2025.
- [8] On March 10, 2025 the Rental Office emailed the parties notice of a teleconference hearing rescheduled for March 27, 2025.
- [9] On March 14, 2025 the Rental Office emailed the parties a 50-page document (the "Evidence Package").
- [10] On March 27, 2025 the Landlord's representatives and the Tenant joined the teleconference hearing. The parties confirmed receipt of the Evidence Package and confirmed that all documents submitted to the Rental Office were included.

ISSUES

- A. Is the Tenant deemed to have accepted the Notice?
- B. Has the Landlord established a valid basis for ending the Tenancy Agreement?

ANALYSIS**A. Is the Tenant deemed to have accepted the Notice?**

- [11] For the reasons below, I find that the Tenant is not deemed to have accepted the Notice.
- [12] Subsections 61(5) and (6) of the *Residential Tenancy Act* (the "Act") contain deeming provisions when a tenant does not file an application disputing a notice of termination served for cause (subsection 61(1)). These deeming provisions state that a tenancy will end by operation of law, as follows:

(5) A tenant may dispute a notice of termination under this section by making an application to the Director under section 75 within 10 days after the date the tenant receives the notice.

(6) Where a tenant who has received a notice of termination under this section does not make an application to the Director in accordance with subsection (5), the tenant

(a) is deemed to have accepted that the tenancy ends on the effective date of the notice of termination; and

(b) shall vacate the rental unit by that date.

- [13] The British Columbia Court of Appeal¹ made the following comment regarding similar provisions of British Columbia's residential rental legislation:

"In my view, the Legislative Assembly has clearly and expressly stated that a tenant's failure to respond within the statutory time limits to a notice given in accordance with either s. 46(4) or s. 47(4) will, by operation of law, bring a tenancy to an end and entitle the landlord to regain possession of the rental unit..."

- [14] The Tenant did not file an application disputing the Notice.
- [15] However, I note that there are exceptions to deemed acceptance of a notice of termination, even when a tenant has not applied to dispute the notice.
- [16] Subsections 61(5) and (6) of the *Act* are similar to subsections 16(1), (2) and (3) of the *Rental of Residential Property Act* (the "*Former Act*")², the former residential rental legislation. Under the *Former Act* a defect in the notice itself or service of the notice was a defence against deemed acceptance of the notice.
- [17] In Order LR08-08 the Island Regulatory and Appeals Commission (the "Commission") found that it would be unfair to deem that a tenant had accepted a notice of termination because the notice did not set out the particulars of termination. The tenant did not have the information necessary to make an informed decision to respond to the notice.
- [18] Subsection 53(d) of the *Residential Tenancy Act* requires the Landlord to state the grounds for ending the Tenancy Agreement. The Landlord selected two legal bases for ending the tenancy but did not provide any details of the events in the particulars of termination. Instead, the particulars were left blank.
- [19] The bases selected on the Notice can include a wide range of events. Looking solely at the Notice, I do not know what events occurred that caused the Landlord to want to evict the Tenant.
- [20] The Notice does not provide sufficient clarity regarding the grounds that the Landlord seeks to end the tenancy and therefore the Landlord cannot rely on the *Act's* deeming provisions.
- [21] As a result, I find that the Tenant is not deemed to have accepted the Notice and I will determine the dispute on its merits.

¹ *Ganitano v. Metro Vancouver Housing Corporation*, 2014 BCCA 10, at paragraph [44].

² *Rental of Residential Property Act*, RSPEI 1988, R-13.1.

B. Has the Landlord established a valid basis for ending the Tenancy Agreement?

- [22] The Landlord selected two reasons in the Notice for ending the Tenancy Agreement based upon clauses 61(1)(c) and (d) 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:

(c) there is an unreasonable number of occupants in the tenant's rental unit;

(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;

- [23] The Landlord has the onus to prove, on the civil standard of the balance of probabilities, a valid reason to end the tenancy.
- [24] In Order LR24-64 the Commission made the following comment regarding a landlord ending a tenancy (paragraph 21):

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

- [25] The Notice was the first *Form 4(A) Eviction Notice* served by the Landlord to the Tenant regarding the Unit. The parties have not been involved in earlier Rental Office proceedings regarding the Tenancy Agreement.
- [26] There is limited objective evidence regarding the number of people living in the Unit or problematic behaviour engaged in by the Tenant and her guests. There are no videos or photographs showing the events which led to the Notice being served to assist my determination of its validity.
- [27] None of the other tenants living in the Residential Property participated in the teleconference hearing. I note that tenant witnesses frequently participate in Rental Office teleconference hearings to support a landlord ending a tenancy.
- [28] Instead, part of the Landlord's evidence is redacted (marked out) emails with the identity of the complainant obscured. Such anonymous evidence is of limited to no value in supporting the Notice.
- [29] The Department of Environmental Health has not inspected the Unit and I do not have the benefit of a written report.
- [30] The Landlord claims that the Tenant is impeding pest control remediation work but has provided insufficient documentary evidence from the pest control company to support the Landlord's position. No witnesses from the pest control company participated in the hearing.
- [31] I do not have compelling evidence supporting the Notice.
- [32] As a result, I find that the Notice is invalid and the Application is denied. The Tenancy Agreement remains in full force and effect and the Tenant can continue living in the Unit.

Warning to the Tenant

- [33] The Tenant and her guests must ensure that they do not engage in behaviour which disturbs other people living in the Residential Property. The Tenant must ensure that there are not an unreasonable number of occupants in the Unit.
- [34] The Tenant must also ensure that she provides access to the Unit as required by the *Residential Tenancy Act* (see section 23). I note that in Commission Order LR24-19 a tenant was evicted for interfering with pest control work.

IT IS THEREFORE ORDERED THAT

1. The Tenancy Agreement remains in full force and effect and the Tenant can continue living in the Unit.

DATED at Charlottetown, Prince Edward Island, this 28th day of March, 2025.

(sgd.) Andrew Cudmore

Andrew Cudmore
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.