

**INTRODUCTION**

- [1] The Tenant disputes the eviction notice served by the Landlord. The Tenant wants a tenancy agreement as the sole tenant of the Landlord. The Tenant wants permission to have at least one marijuana plant in the Unit. If the Tenant cannot live in the Unit, then the Tenant wants the security deposit returned.
- [2] The Landlord wants to end the tenancy agreement. The Landlord wants to keep the security deposit for unpaid rent.

**DISPOSITION**

- [3] I find that the tenancy agreement is terminated effective March 31, 2025. The Tenant cannot move back into the Unit under the tenancy agreement.
- [4] The security deposit will need to be addressed in accordance with section 40 of the *Residential Tenancy Act* (or the "Act").

**BACKGROUND**

- [5] The Unit is a three-bedroom, one-and-a-half-bathroom single family dwelling.
- [6] The Landlord, the Tenant and another tenant ("T2") entered into a written, fixed-term tenancy agreement from December 1, 2024 to November 30, 2025 (the "Tenancy Agreement"). A security deposit of \$1,700.00 was paid in November 2024 through two e-Transfers.
- [7] On January 28, 2025 T2 obtained an emergency protection order (the "EPO") against the Tenant. The EPO required the Tenant to move out of the Unit and not attend the Unit.
- [8] In early February 2025 the Landlord issued a first *Form 4(A) Eviction Notice* against the Tenant and T2 because the Tenant had marijuana plants in the Unit.
- [9] On February 3, 2025 the Tenant filed a first *Form 2(A) Tenant Application to Determine Dispute* with the Residential Tenancy Office (the "Rental Office") disputing the first eviction notice and making additional claims.
- [10] On February 4, 2025 T2 moved out of the Unit.
- [11] The Landlord withdrew the first eviction notice because he had not signed it. Around February 18, 2025 the Landlord served the Tenant with second, signed *Form 4(A) Eviction Notice* effective March 31, 2025 (the "Notice") because of marijuana plants in the Unit. The particulars of termination state as follows:
- "Marijuana plants growing in bedroom. Found during inspection with [T2]."*
- [12] On February 20, 2025 the Tenant filed a second *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Rental Office disputing the Notice and making additional claims.
- [13] On February 25, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for March 20, 2025 along with a copy of the Application.
- [14] On March 17, 2025 the Rental Office emailed the parties a 22-page document (the "Evidence Package").
- [15] On March 19, 2025 the Rental Office emailed the parties an additional 25-page document (the "Supplementary Evidence Package").

- [16] On March 20, 2025 the Tenant, the Tenant's witness ("TW1") and the Landlord joined the teleconference hearing. The parties confirmed receipt of the Evidence Package and the Supplementary Evidence Package. The parties confirmed that all documents submitted to the Rental Office were included, except for the first page of the EPO and a 49 second video provided by the Tenant.
- [17] After the hearing the first page of the EPO, the 49-second video and other documents were added to the record and the parties were given the opportunity to comment on the additional evidence.

### ISSUES

- A. Does the Tenancy Agreement end because of the EPO?
- B. Will the security deposit be determined in this decision?

### ANALYSIS

#### A. Does the Tenancy Agreement end because of the EPO?

##### Emergency Protection Order

- [18] For the reasons below, I find that the Tenancy Agreement is terminated effective March 31, 2025 because of the EPO.
- [19] On January 28, 2025 T2 obtained the EPO against the Tenant, which required the Tenant to move out of the Unit and not attend the Unit.
- [20] At the hearing, the Tenant argued that T2 was not supposed to be a tenant on the Tenancy Agreement. The Tenant stated that the Landlord provided the Tenancy Agreement to T2 and did not provide a copy to the Tenant.
- [21] TW1 stated that she moved the Tenant's personal belongings into the Unit at the beginning of the tenancy and T2 did not have personal property in the Unit.
- [22] The Landlord stated that the Unit was rented to the Tenant and T2. After the hearing, the Landlord provided a rental application, Tenancy Agreement documents, and bank documents showing that T2 paid the security deposit funds to the Landlord.
- [23] On February 3, 2025 T2 messaged the Landlord stating that the Tenant was not living in the Unit because of the EPO. The Landlord stated that he learned about the assault while talking with T2.
- [24] On February 4, 2025 T2 told the Landlord that she was scared and she was not going to live in the Unit anymore. T2 and her mother had cleaned up the Unit and removed all of T2's personal property. The Landlord then provided the RCMP with a copy of a key to the Unit to allow access for the Tenant to remove his belongings.
- [25] I have reviewed the evidence of the parties.
- [26] The Tenant claims that he was supposed to be the sole tenant of the Landlord.
- [27] However, the application to rent the Unit contains T2's signature. The Tenancy Agreement lists both the Tenant and T2 as the Landlord's tenants. The bank documents submitted by the Landlord state that T2 paid the security deposit.
- [28] Based upon the evidence presented, I find that the Tenant and T2 were both tenants of the Landlord under a single Tenancy Agreement.

[29] With regard to the EPO, subsection 75(2) of the *Act* states:

*In any proceeding under this Act where one of the issues to be determined by the Director is whether a person is deemed under section 56 to have experienced family violence, the Director may only inquire into and make a determination as to whether the documentation accompanying the notice is genuine and is a copy of an order specified in clause 56(5)(a) or (b) or a statement referred to in clause 56(5)(c).*

[30] I am satisfied that the EPO is a genuine document and it is an order specified in clause 56(5)(a).

[31] Section 56 permitted T2 to end the Tenancy Agreement with one full month's notice (subsection 56(3)) because of the EPO.

[32] I am satisfied that T2 notified the Landlord by February 4, 2025 that she was moving out of the Unit because of the EPO, which terminates the Tenancy Agreement effective March 31, 2025.

[33] The Landlord could have insisted that T2 provide proper written notice with supporting documentation (subsection 56(4)). However, the Landlord did not insist upon T2 fulfilling these requirements and instead the Landlord also sought the end of the Tenancy Agreement.

[34] Section 58 of the *Act* states:

*Where a fixed-term tenancy is terminated under section 56 or 57 by one of two or more tenants who are subject to the same tenancy agreement, the remaining tenant or tenants shall also vacate the rental unit, unless the remaining tenant or tenants enter into a new tenancy agreement with the landlord.*

[35] In this case the Tenant is not currently living in the Unit. I find that the Tenant cannot move back into the Unit under the Tenancy Agreement.

[36] If the Tenant wants to move back into the Unit, then the Tenant would need to enter into a new tenancy agreement with the Landlord. This would be up to the Landlord to decide.

[37] If the Landlord is unwilling to enter into a new tenancy agreement with the Tenant, then the Landlord must address the Tenant's personal property remaining in the Unit in accordance with section 43 of the *Act*.

### **Marijuana Plants**

[38] As the Tenancy Agreement ends because of the EPO, it is unnecessary for me to determine the validity of the Notice regarding the marijuana plants. However, I would like to note the following matters to the parties.

[39] With regard to non-medical use cannabis, subsections 12(2) and (3) of the Province's *Cannabis Control Act* provide the following cultivation restrictions:

*(2) No person shall cultivate, or offer to cultivate, cannabis unless it is cultivated within that person's private dwelling and*

- (a) the person is in lawful possession of the cannabis;*
- (b) the cannabis is cultivated in a space that is inaccessible to any person under 19 years of age who resides in the private dwelling;*
- (c) the cannabis is cultivated in a space that complies with any requirements specified in the regulations; and*
- (d) the cannabis is cultivated in a manner that complies with any standards specified in the regulations.*

(3) *No person shall cultivate, or offer to cultivate, cannabis in a private dwelling unless*

- (a) *in the case of a lessee, the lessor has, in writing, permitted the lessee to cultivate cannabis in the private dwelling; and*
- (b) *in the case of a private dwelling that is a unit, the owner or lessee is not prohibited from cultivating cannabis in the private dwelling under the condominium bylaws applicable to that unit.*

- [40] The *Cannabis Control Act* requires a tenant (lessee) to have written permission from a landlord (lessor) to cultivate cannabis. In this case the evidence establishes that written permission was not provided.
- [41] The parties provided conflicting evidence regarding implied or oral permission for the Tenant to cultivate marijuana.
- [42] The Tenant stated that he had two tents in the Unit. One tent had two marijuana plants and two clones that were starting to root. The other tent contained a cherry tomato plant. The Tenant stated that the Landlord was present when the tents were set up and the Landlord gave no indication growing marijuana plants was a problem.
- [43] The Landlord stated that on December 3 or 4, 2024 he saw three marijuana plants in the Unit. The Landlord stated that the Tenant was given oral permission to have marijuana plants in the little shed on the property. The Tenant was permitted to smoke outside. The Landlord stated that it will take a lot of work to remove the marijuana smell from the Unit.
- [44] I also note that there are a number of requirements for cultivating cannabis provided in the Federal *Cannabis Act* and its accompanying regulations.

**B. Will the security deposit be determined in this decision?**

- [45] The Landlord stated that rent was not paid for February and March 2025 and the Landlord is paying for the Unit's electricity.
- [46] The Tenant stated that he last paid the electricity for January 2025. The Tenant stated that he has not paid the recent electricity bills because he is not living in the Unit.
- [47] I will not issue a monetary order in this decision regarding the security deposit because T2 is not a party to this proceeding.
- [48] The rules for keeping or returning the security deposit are provided in section 40 of the *Act*.
- [49] The Landlord, the Tenant and T2 can enter a written agreement regarding the security deposit (and applicable interest under subsection 14(9)). The Landlord could return the security deposit by April 15, 2025. The Landlord could file an application with the Rental Office by April 15, 2025 seeking to keep the security deposit.
- [50] **If the Landlord does not comply with section 40 of the *Act*, then an application can be filed against the Landlord seeking double the security deposit amount.**

**IT IS THEREFORE ORDERED THAT**

1. The Tenancy Agreement is terminated effective March 31, 2025. The Tenant cannot move back into the Unit under the Tenancy Agreement.
2. If the Landlord does not enter a new tenancy agreement with the Tenant, then the Landlord must address the Tenant's personal property in accordance with section 43 of the *Act*.

**DATED** at Charlottetown, Prince Edward Island, this 31st day of March, 2025.

(sgd.) Andrew Cudmore

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**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.