

INTRODUCTION

- [1] The Landlords seek termination of the tenancy agreement due to unpaid rent.
- [2] The Tenant disputes the termination of the tenancy agreement.

DISPOSITION

- [3] I find that the Landlords have not established a valid basis for ending the tenancy.
- [4] The tenancy agreement continues in full force and effect.

BACKGROUND

- [5] The Unit is a house that the Landlords own.
- [6] The parties entered into a written, fixed-term tenancy agreement for the Unit from October 17, 2023, to May 31, 2024. The tenancy agreement then continued as a month-to-month agreement. Rent of \$1,000.00 is due on the first day of the month. A \$1,000.00 security deposit was paid at the beginning of the tenancy.
- [7] On March 10, 2025, the Landlords served the Tenant with a *Form 4(A) Eviction Notice* with an effective date of March 31, 2025 (the "Notice") for the following reason:

You have not paid your rent in the amount of \$1000.

- [8] The particulars of termination state:

"Tenant still owes unpaid rent dating back to the summer of 2024, spread out over several months, starting in June."

- [9] On March 14, 2025, the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") to dispute the Notice.
- [10] On March 19, 2025, the Rental Office emailed the parties and mailed the Tenant notice of a teleconference hearing scheduled for April 3, 2025.
- [11] On March 28, 2025, the Rental Office emailed the parties a 31-page PDF (the "Evidence Package").
- [12] On April 3, 2025, the Tenant and a Landlord, representing both Landlords, participated in the teleconference hearing. The parties confirmed receipt of the Evidence Package and that all evidence submitted to the Rental Office was included.

ISSUES

- A. Did the fixed-term tenancy agreement end between the parties or renew month-to-month?
- B. Must the Tenant vacate the Unit due to the Notice?

ANALYSIS**A. Did the fixed-term tenancy agreement end between the parties or renew as month-to-month?**

- [13] The Landlord stated that on May 31, 2024, the fixed-term tenancy agreement between the parties had ended. He stated that another fixed-term tenancy agreement was offered to the Tenant, but the Tenant refused to sign it. The Landlord stated that the Tenant was not communicating with the Landlords about whether he was going to remain in the Unit or not.
- [14] The Tenant stated that he told the Landlords that he did not want to sign a new fixed-term tenancy agreement because the Landlords were changing some of the terms. He stated that he told the Landlords he wanted to go month-to-month after the fixed term expired.
- [15] Subsection 52(1) of the *Residential Tenancy Act* (the “Act”) states that a fixed-term tenancy agreement is deemed to be renewed as a month-to-month agreement if it does not include an option to renew. In this case, the tenancy agreement states there may be a “*possibility for an extension, depending on availability.*” As the Landlords asked the Tenant to sign a new fixed-term agreement, it does not appear that availability was a factor when the fixed term expired.
- [16] However, I note that the Tenant was not required to sign a new fixed-term agreement and chose to renew it as a month-to-month agreement. As such, I find that the tenancy did not end with the expiry of the fixed term and that it converted to a month-to-month agreement with the same terms and conditions.

B. Must the Tenant vacate the Unit due to the Notice?

- [17] The Landlord stated that in June 2024, the Tenant was late paying rent and utilities and had only paid the Landlords \$300.00. On June 10, 2024, the Landlord's wife sent a message to the Tenant stating that the security deposit was being used to pay the remainder of June 2024's rent (\$700.00) and the outstanding utility bill (\$71.39), leaving \$228.61 of the security deposit.
- [18] The Landlord stated that the Tenant agreed to use the security deposit to pay the rent and utilities owed. Because the security deposit was then depleted, the Landlords requested the Tenant to repay the security deposit because the fixed term had ended, and the parties were going to enter into a new tenancy agreement.
- [19] The Landlord stated that the Tenant refused to repay the security deposit or sign a new tenancy agreement. The Landlord stated that he spoke to the Rental Office, which suggested serving the Tenant with an eviction notice, as the Tenant refused to speak to the Landlords regarding the Unit.
- [20] The Tenant agreed that he was late with June 2024's rent and had only paid \$300.00. He stated that he was going to pay the rest of the rent owed, but the Landlord's wife told him that the security deposit had been used to pay the remaining rent and utilities owed. He stated that he told the Landlords to use the remaining balance of the security deposit for future utilities owed.
- [21] The Tenant stated that he did not ask the Landlords to use the security deposit for rent owed. The Tenant stated that he was not even required to pay a security deposit because it was not stated in the tenancy agreement. He stated that he paid a security deposit because you are supposed to. The Tenant stated that the Landlords should not have used his security deposit for the rent owed and that they should have left it in an interest-bearing account until the tenancy ended.
- [22] The Landlords' reason in the Notice for terminating the tenancy is under subsection 60(1) of the Act, which states: “*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.*”

- [23] The Landlord stated that the security deposit was used to pay the rent and utilities owed for June 2024 because the Tenant was late with the rent and the fixed-term tenancy had ended. He stated that because the Landlords no longer hold a security deposit, the Tenant should have to repay the security deposit. The Landlord argued that the Tenant's failure to repay the security deposit is the equivalent of owing rent for June 2024.
- [24] However, section 15 of the Act states that a landlord shall not "*require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement*" or "*require or accept more than one security deposit in respect of a tenancy agreement.*"
- [25] The parties agreed that the Tenant paid a security deposit at the beginning of the tenancy. As I have found that the tenancy has continued as a month-to-month agreement, section 15 of the Act prohibits the Tenant from having to pay a second security deposit during the tenancy.
- [26] In conclusion, the Landlords served the Notice because they allege that the Tenant failed to pay the rent and utilities in June 2024. However, the evidence establishes that the Landlords used the security deposit to pay the outstanding rent and utilities owed. As such, I find that the Tenant does not owe rent or utilities for June 2024.
- [27] I find that the Notice is not valid, and the Application is allowed.

Form of Tenancy Agreement

- [28] The parties signed a tenancy agreement that did not comply with the requirements under subsection 11(2) of the Act. The standard form tenancy agreement (*Form 1 – Standard Form of Tenancy Agreement*) is available on the Rental Office's website. The Landlords should ensure that any future tenancy agreements contain the information required by the Act.

IT IS THEREFORE ORDERED THAT

1. The Landlords have not established a valid basis for ending the tenancy.
2. The tenancy agreement continues in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 7th day of April, 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.