

INTRODUCTION

- [1] The Tenants filed an application disputing an eviction notice served by the Landlords for an unreasonable number of occupants in the Unit, unreasonable damage and providing false information about the Unit.

DISPOSITION

- [2] I find that the Landlords have not established a valid basis for ending the tenancy agreement contained in the eviction notice. The tenancy agreement remains in full force and effect.

BACKGROUND

- [3] The parties entered into a written, fixed-term tenancy agreement from February 3, 2025 to February 3, 2026 (the "Tenancy Agreement"). A \$2,000.00 security deposit was paid. Rent in the amount of \$2,900.00 is due on the third day of the month. The Tenancy Agreement states that the Unit is a single family home.
- [4] On March 1, 2025, the Landlords served the Tenants with a *Form 4(A) Eviction Notice* with an effective date of April 1, 2025 (the "Notice") based upon an unreasonable number of occupants in the Unit, unreasonable damage and providing false information about the Unit.
- [5] I note that the effective date is automatically corrected to April 3, 2025 under section 54 of the *Residential Tenancy Act* (or the "Act") to comply with the minimum notice period under subsection 61(3).
- [6] The Notice's particulars of termination state:
- "As a fully furnished rental we ask for the tenant to put in place all furniture and content as it was on the first day. We also ask that the home is fully cleaned or professionally cleaned if needed."*
- [7] On March 10, 2025 the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") disputing the Notice.
- [8] On March 21, 2025 the Rental Office emailed the parties notice of a paper-based hearing along with a copy of the Application.
- [9] On April 1, 2025 the Rental Office sent the parties a 174-page PDF document and video evidence ("EP"). The parties provided additional documentary evidence and written responses to the Rental Office by April 14, 2025, which forms part of the record for this matter.
- [10] On April 24, 2025 this Order was issued to the parties.

ISSUE

- A. Must the Tenants and all occupants vacate the Unit?

ANALYSIS

- [11] The Landlords included three reasons in the Notice for ending the Tenancy Agreement.
- [12] The Landlords have the onus to prove, on the civil standard of the balance of probabilities, a valid reason to end the tenancy contained in the Notice.

- [13] In Order LR24-64 the Island Regulatory and Appeals 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...”

- [14] For the reasons below, I find that the Landlords have not established a valid basis for ending the Tenancy Agreement.

Number of Occupants

- [15] The first reason in the Notice is based upon clause 61(1)(c) of the *Act*, which states:

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;

- [16] Based upon the evidence presented, a single family composed of eleven persons moved into the Unit. There are the four Tenants, which are a mother and three adult children. There are an additional seven children that are not named in the Tenancy Agreement. The Landlords and the Tenants provided conflicting evidence regarding whether an additional adult person (“AP”) is also living in the Unit.
- [17] The Landlords’ evidence is that the AP told the Landlords that he was living in the Unit. The Tenants’ evidence is that AP has been at the Unit because of the dispute between the parties. I am not satisfied that AP is in fact living in the Unit as he may be attending the Unit on a temporary basis.
- [18] The meaning of an unreasonable number of occupants is informed by the *Public Health Rental Accommodation Regulations* (the “*Accommodation Regulations*”). There are minimum size requirements and other specifications for rental units based upon the number of occupants. I note that the rules for ascertaining the number of occupants are provided in section 11 of the *Accommodation Regulations*.
- [19] The Landlords provided limited evidence regarding the size of the Unit. In the text messages between the parties the Tenants asked for the Unit’s size in the context of setting up services at the beginning of the tenancy. The Landlords responded stating that the Unit’s size was around 2,800 square feet (EP86).
- [20] The Landlords have not provided compelling evidence that the number of occupants in the Unit breaches the *Accommodation Regulations*, including the sleeping space and area requirements (subsection 2(1)) and the sanitary facilities requirements (subsection 2(3)). The evidence does not establish that the Unit has been inspected by the Department of Environmental Health regarding non-compliance with the *Accommodation Regulations*. I find that the Landlords have provided insufficient evidence to end the Tenancy Agreement under clause 61(1)(c).
- [21] A significant amount of the Landlords’ evidence relates to allegations that the Tenants have breached a material term of the Tenancy Agreement. The Landlords argue that the Tenants agreed only four people would be occupying the Unit.
- [22] I note that ending a tenancy agreement for the breach of a material term involves a different procedure. Clause 61(1)(h) states as follows:

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

(h) the tenant

*(i) has failed to comply with a material term of the tenancy agreement, and
(ii) has not corrected the situation within a reasonable time after the
landlord has given written notice to do so;*

- [23] An eviction notice must include the grounds for ending the tenancy (subsection 53(d)).
- [24] The Landlords did not select breach of a material term of the Tenancy Agreement in the Notice. Therefore, I cannot consider this basis for ending the Tenancy Agreement in this decision.

Unreasonable Damage

- [25] The second reason in the Notice is based upon clause 61(1)(f) of the *Act*, which states:

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

(f) the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property;

- [26] The Landlords' evidence is summarized as follows. The Landlords submitted into evidence photographs of the Unit taken sometime before the Tenancy Agreement started. The Landlords also submitted into evidence photographs after the tenancy commenced. The photographs show cushion damage. The Tenants moved furniture and other personal property in the Unit that is owned by the Landlord.
- [27] The Tenants' evidence is summarized as follows. The Tenants deny being responsible for unreasonable damage to the Unit. The Tenants stated that the Unit was not clean when the Tenants moved in. The Tenants packed up dishes, ornaments and other belongings and placed the boxes in the Unit's basement. The Landlords told the Tenants that this was fine as long as the paintings were left alone. The Tenants deny moving the Landlords' furniture except for a fine china cabinet which was moved to a bedroom upstairs to help keep it safe.
- [28] The evidence does not establish that the Tenants caused unreasonable damage to the Unit.
- [29] I note that it was mandatory for the Landlords to complete a written move-in inspection report under section 18 of the *Act*. This type of report would direct the Landlords' and the Tenants' minds to any damage or uncleanliness existing at the beginning of the Tenancy Agreement. The completion of a move-in inspection report helps establish a baseline condition for a rental unit.
- [30] The evidence presented does not establish that such a report was completed and no inspection report was submitted into evidence. Almost all of the Landlords' photographs are not date stamped.
- [31] The Landlords' photographs of the Unit taken sometime before the Tenancy Agreement commenced show larger portions of the Unit. The damaged areas claimed to be the responsibility of the Tenants are mainly contained in close-up photographs that do not have a close-up photograph equivalent from before the Tenancy Agreement commenced. As a result, the baseline condition of the damaged areas at the beginning of the Tenancy Agreement is unclear.
- [32] The movement of any furniture or personal property within the Unit does not, on its own, establish unreasonable damage. The state of cleanliness shown in the Landlords' photographs does not amount to unreasonable damage.
- [33] I do not have compelling evidence that the Tenants caused unreasonable damage to the Unit. As a result, I find that the Landlords have not established a breach of clause 61(1)(f).

False Information About the Unit

[34] The third reason in the Notice is based upon clause 61(1)(j) of the *Act*, which states:

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

(j) the tenant knowingly gives false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person;

[35] On the Notice the Landlords wrote beside this reason for termination “*The purpose and intent of the rental unit.*”

[36] The Landlords’ evidence is that the Tenants gave the Landlords false information regarding the number of persons that would be occupying the Unit.

[37] However, this type of claim is not a valid basis for ending a tenancy agreement under clause 61(1)(j) of the *Act*. This clause addresses a tenant giving false information about a rental unit or residential property. This clause does not address a prospective tenant giving false information about the potential use of a rental unit.

[38] As a result, I find that the Landlords have not established a breach of clause 61(1)(j).

CONCLUSION

[39] For the reasons above, I find that the Notice is invalid and the Application is allowed. The Tenancy Agreement remains in full force and effect.

IT IS THEREFORE ORDERED THAT

1. The Tenancy Agreement remains in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 24th day of April, 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.