

INTRODUCTION

- [1] The Tenant filed an application disputing an eviction notice served by the Landlords for failure to comply with a material term of the tenancy agreement.

DISPOSITION

- [2] I find that the Landlords have not established a valid basis for ending the tenancy agreement and the tenancy will continue.

BACKGROUND

- [3] The Unit is a two-bedroom and one-bathroom single-family home (the "Residential Property").
- [4] On October 18, 2023 the parties entered into a written, fixed-term tenancy agreement from October 17, 2023 to May 31, 2024. A \$1,000.00 security deposit was paid. Rent of \$1,000.00 is due on the first day of the month.
- [5] On March 29, 2025 the Landlords served the Tenant with a *Form 4(A) Eviction Notice* with an effective date of April 30, 2025 (the "Notice") for not complying with a material term of the tenancy agreement.
- [6] On April 4, 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] The parties were involved in an earlier Rental Office dispute regarding the end of the tenancy, which was determined in Order LD25-131.
- [8] On April 9, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for April 22, 2025.
- [9] On April 17, 2025 the Rental Office emailed the parties a 43-page evidence package.
- [10] On April 22, 2025 the Tenant and the Landlords joined the teleconference hearing for determination of the Application. The parties confirmed receipt of the evidence package and confirmed that all documents submitted to the Rental Office were included.

PRELIMINARY MATTER

Admissibility of Evidence

- [11] The Landlords requested that documentary evidence¹ submitted by the Tenant be removed from the evidence package. The Landlords argued that pages 11-13 were not relevant to the dispute on the Application, and that pages 18-21 is the previous Rental Office decision, which the Landlords stated they are appealing. However, the Landlords stated that at the time of the hearing they have not yet filed a *Notice of Appeal* with the Island Regulatory and Appeals Commission (the "Commission").
- [12] The Tenant disputed the Landlords request. The Tenant stated that the disputed documents are relevant and provide context to support some of his arguments on the Application.

¹ Pages 11-13 & 18-21.

- [13] After hearing the parties' submissions, I ruled that the disputed documents would remain part of the evidentiary record. I agree with the Tenant's position that the disputed documents are relevant to this dispute. The documents further provide context to assist in supporting the Tenant's position.
- [14] Further, I note that Rental Office hearings do not have the same strict rules of evidence often found in court proceedings. Clause 80(3)(c) of the *Residential Tenancy Act* (or the "Act") provides me the authority to receive or accept evidence and information on oath, affidavit or otherwise, whether or not that evidence or information is admissible as evidence in a court.

ISSUE

- A. Must the Tenant vacate the Unit due to the Notice?

ANALYSIS & FINDINGS

- [15] The Landlords' reason for terminating the tenancy agreement is under clause 61(1)(h) of the Act, which states:
- (1) *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.*

The Landlords' Position

- [16] The Landlords argue that the Tenant has not complied with provision 10 of the tenancy agreement, which states:
- "Rental period is from 17th of October 2023 to May 31st 2024 with a possibility for an extension, depending on availability."*
- [17] At the beginning of the tenancy, the Landlords were uncertain if they wanted the Unit to be used for long-term residential use or to continue using it as an Airbnb/short-term rental. The Unit is not licensed under the *Tourism Industry Act*.
- [18] The parties' evidence establishes that on June 10, 2024, the Landlords sent the Tenant a text message asking the Tenant what his plans were regarding continuing to live in the Unit. The Landlords suggested a new tenancy agreement would be created if the Tenant wanted to continue living in the Unit.
- [19] On June 14, 2024, the Landlords sent another text message to the Tenant, asking what the Tenant's intentions were and needing to update the tenancy agreement.
- [20] The parties' evidence establishes that the Tenant responded to the Landlords' text messages wanting to continue the tenancy on a month-to-month basis. There were no further conversations regarding the tenancy until January 2025.
- [21] The Landlords stated that they did not follow up with the Tenant in the Summer of 2024 because of personal matters, which took priority and their attention. However, on January 28, 2025, the Landlords sent the Tenant a new fixed-term tenancy agreement.

- [22] In response to the Tenant's submission (see below) the Landlords denied changing the terms and condition of the tenancy. The Landlords stated that the updated tenancy agreement was more clear regarding the already existing terms and conditions.
- [23] The Landlords stated that they gave the Tenant many opportunities to discuss renewing the tenancy agreement. The Landlords stated that they emailed the Tenant in January 2025 warning the Tenant of the necessity to renew the tenancy agreement.
- [24] The Landlords stated that they disagreed with the findings in Order LD25-131, and that they will be appealing that decision. The Landlords stated that they disagreed with the Rental Officer's finding that the tenancy agreement automatically converted to a month-to-month basis under subsection 52(1) of the Act.

The Tenant's Position

- [25] The Tenant disputed the reason on the Notice for terminating the tenancy.
- [26] The Tenant stated that he told the Landlords he wanted to continue the tenancy on a month-to-month basis. The Tenant stated that there were no further conversations with the Landlord about the tenancy after June 14, 2024 until January 28, 2025. The Tenant stated that he worked for one of the Landlords almost every day until December 2024. The Tenant stated that there were no conversations with the landlord regarding renewing the fixed-term tenancy agreement.
- [27] The Tenant stated that he continued to pay the rent every month and then in January 2025 he received a new tenancy agreement from the Landlords. The Tenant stated that he did not sign the new tenancy agreement because the existing tenancy was on a month-to-month basis. The Tenant stated that he was not required to sign the new tenancy agreement, and that the Landlords changed the terms and conditions, which he did not agree with.
- [28] The Tenant stated that the previous Rental Office Order was correct in dismissing the previous eviction and finding that the tenancy was a month-to-month agreement.

Findings

- [29] For the reasons below, I find that the Landlords have not established a valid basis for ending the tenancy agreement.
- [30] The Landlords seek to end the tenancy under clause 61(1)(h), which is the Tenant has not complied with a material term of the tenancy agreement despite written warning. The tenancy agreement has a provision, which states a possible extension of the tenancy agreement upon the expiry of the fixed-term date (May 31, 2024) based upon availability.
- [31] Subsection 80(2) of the Act states:
- (2) *The Director shall make every decision based on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions made under this Part.*
- [32] Included in the evidence was Order LD25-131, which determined that the fixed-term tenancy agreement converted to a month-to-month agreement under subsection 52(1) and that the tenancy would continue.
- [33] I note that I am not bound by the findings of LD25-131 (see subsection 80(2)).

[34] Subsection 52(1) of the Act states:

- (1) *Where a tenancy agreement ends on a specific date and does not include an option to renew, and the landlord has not terminated the agreement in accordance with Division 3 of this Part, the landlord and the tenant are deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increases that complies with this Act.*

[35] I find that the tenancy agreement does not contain an option to renew. Such a provision would permit the Tenant to renew the tenancy agreement for a period of time by providing the Landlords with a reasonable amount of notice. Instead the tenancy agreement only provides a possibility for an extension based upon availability.

[36] One of the overarching purposes of the Act is to provide a tenant with security of tenure. This means that a tenancy can only be ended for a reason specifically stated in the Act. In this case, the Tenant is already living in the Unit and the Unit is not licensed under the *Tourism Industry Act*. Considering “availability” of the Unit is not prohibited under the Act.

[37] Subsection 52(1) does not permit a landlord a new ground for ending a tenancy that is not authorized by the Act.

[38] I note that section 5 of the Act states:

This Act cannot be avoided

Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.

[39] For these reasons, I find that provision 10 in the tenancy agreement provides a condition which is prohibited by the Act. Therefore, this provision is void and of no effect.

[40] I find that the Landlords have not established a valid basis for ending the tenancy agreement.

[41] In the alternative, the evidence establishes that from June 2024 to January 2025, the Tenant continued to live in the Unit, paid rent, and the Landlords accepted the rent every month with no discussion or demands regarding a new fixed-term tenancy agreement.

[42] Essentially, the tenancy existed and continued on a month-to-month basis. The Landlords accepted the rent every month, and the Landlords did not advise the Tenant that a month-to-month agreement was unacceptable and that renewing the fixed-term or terminating the tenancy were the only choices. The evidence establishes that the “availability” part of the clause was not an issue at the time the fixed-term expired as the Landlords were open to the Tenant remaining in the Unit. Based upon these circumstances, I find that the Landlords acquiesced (accepted)² through conduct that the tenancy would continue on a month-to-month basis.

[43] In these circumstances, I also find that the Tenant would not have failed to comply with a material term of the tenancy agreement.

[44] Therefore, the Notice is invalid and the Application is allowed. The tenancy will continue in full force and effect.

² Section 101.

IT IS THEREFORE ORDERED THAT

1. The tenancy will continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 25th day of April, 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.