

**INTRODUCTION**

- [1] The Landlord seeks to end the tenancy claiming that the Tenants have made noise disturbing other occupants.

**DISPOSITION**

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

**BACKGROUND**

- [3] The Unit is a two-bedroom, two-bathroom unit located in a 36-unit building (the "Residential Property") that the Landlord has operated since 2020. There are 12 units on each of the Residential Property's three levels. The Unit is located on the second level.
- [4] The Landlord and the Tenants entered into a written, fixed-term tenancy agreement for the period of December 1, 2024 to November 30, 2025 (the "Tenancy Agreement"). Rent in the amount of \$1,800.00, plus an additional \$100.00 for a second parking space, is due on the first day of the month. A security deposit of \$1,800.00 was paid around November 30, 2024.
- [5] On March 8, 2025 the Landlord served the Tenants with a *Form 4(A) Eviction Notice* effective April 30, 2025 (the "Notice") based upon noise complaints against the Tenants.
- [6] 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.
- [7] On March 14, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for April 1, 2025 along with a copy of the Application.
- [8] On March 27, 2025 the Rental Office emailed the parties notice of a teleconference hearing rescheduled for April 22, 2025 along with a copy of the Application.
- [9] On April 10, 2025 the Rental Office provided the parties with a 92-page PDF and two videos (the "Evidence Package") through TitanFile.
- [10] On April 22, 2025 the Landlord's representative (the "Representative"), the Landlord's witness ("LW1") and the Tenants joined the teleconference hearing. The parties confirmed receipt of the Evidence Package and confirmed that all evidence submitted to the Rental Office was included.

**ISSUE**

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

**PRELIMINARY MATTER**

- [11] On April 17, 2025 the Representative emailed the Rental Office stating that the Representative would like to withdraw the Notice.
- [12] At the hearing the Landlord and the Tenants requested that the hearing proceed and that I determine the Notice on the merits. As a result, I have made my determination of the Notice below.

**ANALYSIS**

[13] The Landlord has the onus to prove, on the civil standard of the balance of probabilities, a valid reason to end the tenancy.

[14] 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...”*

[15] The Landlord seeks to end the tenancy under clause 61(1)(d) of the *Residential Tenancy Act*, which states:

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

*(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.*

[16] For the reasons below, I find that the Notice is invalid, the Application is allowed and the Tenancy Agreement will continue.

**Landlord's Evidence**

[17] The Representative does not live in the Residential Property and has not directly witnessed problematic noise coming from the Unit. The Representative served the Notice because she received noise complaints.

[18] LW1 stated that he has lived in the rental unit directly below the Unit for about 1.5 years. LW1 has a one-year old baby, LW1's wife is pregnant and LW1's mother-in-law has been at his rental unit.

[19] LW1 stated that there has been too much noise coming from the Unit on a daily basis, starting sometime after the Tenants moved into the Unit. LW1 stated that around 5:00 a.m. noise like jumping or dumbbells being dropped comes from the Unit.

[20] LW1 stated that around noontime there is noise from the Unit which wakes up his baby. Part of the noise sounds like kitchen, mixing noise.

[21] LW1 stated that there is also too much noise coming from the Unit at nighttime, after 7:00 p.m., which wakes up LW1's wife and baby.

[22] LW1 stated that the Tenants' baby is not causing the noise.

[23] LW1 stated that he complained directly to the Tenants two or three times in February and March but the noise has continued. LW1 also made complaints to the Representative. LW1 made two recordings from within his Unit which are part of the Evidence Package.

**Tenants' Evidence**

[24] The Tenants dispute that they have engaged in behaviour that justifies the end of the Tenancy Agreement.

- [25] The Tenants stated that they do not use exercise equipment and they do not know what could be causing the weight-dropping sounds complained of by LW1.
- [26] The Tenants stated that they are not normally awake at 5:00 a.m. The Tenants do not normally wake up until 6:00 a.m. and their child does not wake up until about 7:30 a.m.
- [27] The Tenants stated that the type of noise complaints has changed. The earlier complaints were about the Tenants' child causing noise and now the complaints are kitchen and weight-dropping noises.
- [28] The Tenants stated that on April 10, 2025 the Representative gave notice to inspect the Unit for the following day. On April 11, 2025 the Representative, a person accompanying the Representative and one of the Tenants had a one-hour discussion regarding the noise complaints.
- [29] The Tenants stated that they have adjusted their kitchen use based upon the noise complaints. The Tenants have stopped using a hand-held cardamom beater. The Tenants use an electric mixer-grinder for one or two minutes a day for spices. The Tenants provided evidence regarding their responsiveness to other complaints from the Representative.
- [30] The Tenants stated that noise has been coming from the rental unit above the Unit.

**Determination**

- [31] The evidence presented does not establish that the Tenants are responsible for excessive noise coming from the Unit that supports the end of the Tenancy Agreement.
- [32] LW1 provided evidence regarding some noise that appears to be coming from the Unit. I note that a significant portion of the noise complaints are daytime noise, when it would be expected that a greater amount of activity and related noise would occur throughout the Residential Property compared to late at night and early in the morning.
- [33] Part of the noise appears to be related to the use of kitchen items for crushing, grinding and mixing spices. These appear to be relatively common kitchen activities that would be expected in residential rental units and would not be the basis for an eviction.
- [34] LW1 stated that part of the noise comes from the Unit around 5:00 a.m., however, the Tenants' evidence is that their family is not normally awake until around 6:00 a.m. Based upon the evidence presented, I am not satisfied that the Tenants are causing noise at 5:00 a.m.
- [35] The Tenants denied that they are using exercise equipment and they do not know what has caused this type of noise. On the evidence presented, it is unclear to me what is in fact causing the dumbbell noise complained of by LW1.
- [36] For these reasons, I find that there is insufficient evidence to end the Tenancy Agreement regarding noise from the Unit.
- [37] I note that the Tenants and LW1 both have young children and it is obvious that noise can disrupt naptime. Ideally the Tenants and LW1 would communicate with one another to help avoid noisier activities when naptimes typically occur.

**CONCLUSION**

[38] The Notice is invalid and the Application is allowed.

[39] The Tenancy Agreement will continue in full force and effect and the Tenants can continue living in the Unit.

**IT IS THEREFORE ORDERED THAT**

1. The Tenancy Agreement will continue in full force and effect and the Tenants can continue living in the Unit.

**DATED** at Charlottetown, Prince Edward Island, this 30th day of April, 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.