

INTRODUCTION

- [1] This decision determines an application filed under the *Residential Tenancy Act* (“Act”) with the Residential Tenancy Office (“Rental Office”).
- [2] The Tenant filed an application disputing an eviction notice served by the Landlord for disturbing others and causing damage in the Unit due to smoking.

DISPOSITION

- [3] The tenancy is terminated effective 5:00 p.m. on May 14, 2025. The Tenant and all occupants must vacate the Unit by this time and date.

BACKGROUND

- [4] The Unit is a bachelor apartment with one-bathroom in a 4-unit building (“Residential Property”).
- [5] On October 7, 2024 the parties entered into an oral monthly tenancy agreement. Rent is \$690.00 due on the first day of the month. A \$690.00 security deposit was paid at the beginning of the tenancy.
- [6] The parties were involved in an earlier Rental Office dispute regarding the end of the tenancy, which was determined in Order LD25-017. The tenancy was ordered to continue.
- [7] On January 30, 2025 the Landlord served the Tenant with a *Form 4(A) Eviction Notice* with an effective date of February 28, 2025 (“Notice”) for disturbing others and causing damage in the Unit due to smoking.
- [8] On February 7, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (“Application”) with the Rental Office disputing the Notice. There was an “other” claim stated on the Application, however, the Tenant did not submit evidence or participate in the hearing to provide greater detail regarding the claim.
- [9] On February 21, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for March 6, 2025. The Landlord requested an adjournment which was permitted.
- [10] On March 7, 2025 the Rental Office emailed the parties an updated notice of teleconference hearing scheduled for March 25, 2025. The Tenant requested an adjournment which was permitted.
- [11] On April 25, 2025 the Rental Office mailed and emailed the parties another updated notice of teleconference hearing scheduled for May 6, 2025.
- [12] On April 29, 2025 the Rental Office emailed the parties a 22-page complete evidence package.
- [13] On May 5, 2025 the Rental Office accepted additional evidence submitted by the Landlord. The additional evidence included one document and one video recording, which was forwarded to the Tenant. Order LD25-017 was also included as “Director’s Evidence.”
- [14] On May 6, 2025 the Landlord’s representative (“Representative”), and two witnesses (“LW1” and “LW2”) joined the teleconference hearing. The Tenant did not join the hearing. At the beginning of the hearing I telephoned the Tenant twice, and left a voicemail message with the teleconference instructions and the Rental Office’s telephone number and emailed the Tenant. I waited ten-minutes before moving forward with the hearing in the Tenant’s absence.

ISSUE

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

PRELIMINARY MATTER**Tenant's Absence & Service of Documents**

- [15] I note that this proceeding was adjourned twice, once at the request of the Landlord and another at the request of the Tenant.
- [16] The Application was filed on February 7, 2025. As of the date of the hearing, this dispute has been ongoing for eighty-eight days. Despite the Tenant being the applicant, the Application is a dispute of the Notice. In this type of case, the burden of proof is on the Landlord to prove that there is valid reason to terminate the tenancy.
- [17] In this case, the Tenant did not answer when I telephoned and emailed her at the beginning of the hearing. I proceeded with the hearing, in the absence of the Tenant. At the time, I was satisfied that the Tenant was sufficiently served with the Notice, the notice of hearing and the evidence package. Further, the additional evidence included a video-recording between the Representative and the Tenant. The Representative stated that this was a recording from April 30, 2025, at the Unit. In the recording, the Tenant references the "IRAC hearing." I note that this was the day after the evidence package was emailed to the parties.
- [18] I further determined that any further postponements without sufficient notice and reasons would not be appropriate or fair to all the parties involved. The Landlord made available his representative and two witnesses at the scheduled hearing time.
- [19] After the hearing concluded, it was discovered that the Tenant had left a voicemail message with the Rental Office before the start of the teleconference hearing. The voicemail is time stamped at 7:58 a.m. May 6, 2025.
- [20] In the voicemail message the Tenant requested an adjournment because she had a damaged phone.
- [21] The Tenant did not provide a sufficient reason for an adjournment. The dispute process has been ongoing for eighty-eight days (see clause 84(1)(d)), with both parties permitted adjournments. Further, the Rental Office in the past has accommodated parties by providing them office space and a telephone to call into a teleconference hearing at the scheduled time. A damaged phone alone is not enough to grant an adjournment in these circumstances.
- [22] It would be unfair to all parties involved to delay this proceeding any longer.

ANALYSIS & FINDINGS

- [23] The Landlord has the onus to prove, on the civil standard of the balance of probabilities, a valid reason to end the tenancy.
- [24] 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..."*
- [25] In this case, the Landlord seeks to end the tenancy under clauses 61(1)(d) and (f) of the Act, which state:

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;**
- (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] For the reasons below, I find that the Notice is valid, the Application is denied, and the tenancy is terminated.

Landlord's Evidence

[27] The Representative stated that the Landlord has received many complaints from other tenants in the Residential Property that the Tenant is smoking in the Unit. The Representative stated that there have also been complaints of continued foot traffic at the Unit and damage.

[28] The Representative stated that he inspected the Unit on April 30, 2025 and provided the video-recording of that inspection into evidence. The Representative stated that he smelled cigarette smoke in the Unit and the walls had yellow nicotine stains. The Representative stated that he asked the Tenant many times not to smoke in the Unit. The Tenant would agree, but never comply. The Representative stated that the other tenants in the Residential Property are all non-smokers.

[29] The Representative stated that the Residential Property is a non-smoking building. The Landlord submitted into evidence a copy of the Unit's advertisement which states that the Unit is non-smoking.

[30] LW1 and LW2 have lived in the Residential Property since June 2023, and live in the rental unit above the Unit.

[31] LW1 and LW2 stated that since the Tenant moved into the Unit, there has been a strong smell of cigarette smoke entering their rental unit. The Tenant will leave their windows open during the winter months and the smell is interfering with their enjoyment of their rental unit.

[32] LW1 and LW2 stated that one of them has health related issues which the cigarette smoke negatively impacts. LW1 and LW2 stated that they both have asked the Tenant to not smoke in the Unit or the common areas. LW1 and LW2 stated that the smoking issue has continued and there has been no improvements while the dispute has been before the Rental Office.

[33] LW1 and LW2 stated that they recognize the Landlord's advertisement and agreed that the Residential Property is non-smoking.

Determination

[34] I find that the Landlord has submitted compelling evidence to warrant the termination of the tenancy under clause 61(1)(d) of the *Act*.

- [35] The evidence establishes that the Unit and the Residential Property are non-smoking. I have heard the Representative and the Landlord's witnesses provide direct testimony regarding their complaints and eye-witness accounts of the Tenant's behaviour and the condition of the Unit. Particularly, I note that in the video-recording, the Tenant does not deny smoking in the Unit when asked by the Representative to not smoke in the Unit and to smoke outside the Residential Property.
- [36] I find that the Landlord has established that the Tenant has significantly disturbed other occupants in the Residential Property. The Notice has a second reason for terminating the tenancy. As I have already found valid reason for terminating the tenancy I will not determine the second reason.
- [37] Therefore, the Notice is valid and the Application is denied.
- [38] The tenancy is terminated effective 5:00 p.m. on May 14, 2025. The Tenant and all occupants must vacate the Unit by this time and date.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the parties will terminate effective **5:00 p.m. on May 14, 2025**.
2. The Tenant and all occupants must vacate the Unit by this time and date.
3. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

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