

**INTRODUCTION**

- [1] The Landlords served an eviction notice to the Tenant seeking to end the tenancy based upon claims of an unreasonable number of occupants and smoking in the Unit.

**DISPOSITION**

- [2] I find that the Landlords have not established a valid basis for ending the tenancy agreement regarding an unreasonable number of occupants and smoking in the Unit.

**PRELIMINARY MATTER**

- [3] The Landlords included a company name (the "Company") in the "Landlord's name" on the first page of the tenancy agreement with the Tenant (the "Tenancy Agreement"). The Landlords also used the Company regarding email correspondence for tenancy matters.
- [4] At the hearing the Landlords stated that the Company has not been incorporated but "*it's in the process of.*"
- [5] I note that the Tenancy Agreement is dated January 8, 2024 and the hearing for this matter was held on May 8, 2025, sixteen months later.
- [6] The Landlords must not use the Company name regarding residential rental matters within the jurisdiction of the *Residential Tenancy Act* (or the "*Act*") while this Company does not legally exist.
- [7] The Landlords in their personal names are each considered a "landlord" in this decision under the definition in subsection 1(h) of the *Act*.

**BACKGROUND**

- [8] The Unit is a one-bedroom, one-bathroom unit located in a four-unit building (the "Residential Property") that the Landlords have owned since September of 2023.
- [9] The parties entered into a written, fixed-term tenancy agreement for the period of January 15, 2024 to January 14, 2025. The tenancy continued on a month-to-month basis at the end of the fixed-term. Rent in the amount of \$1,600.00 is due on the fifteenth day of the month and a \$1,600.00 security deposit was paid.
- [10] On April 7, 2025 the Landlords served the Tenant with a *Form 4(A) Eviction Notice* effective May 15, 2025 regarding an unreasonable number of occupants and smoking in the Unit (the "Notice").
- [11] On April 15, 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.
- [12] On April 22, 2025 the Rental Office emailed the parties notice of a teleconference hearing scheduled for May 8, 2025 along with a copy of the Application.
- [13] On May 2, 2025 the Rental Office provided the parties with a 29-page PDF (the "Evidence Package").
- [14] On May 8, 2025 the Tenant, the Tenant's representative (the "Representative"), the Tenant's witness ("TW1") and the Landlords joined the teleconference hearing. The parties confirmed receipt of the Evidence Package and confirmed that all documents submitted to the Rental Office were included. The Landlords provided additional evidence after the hearing and the Representative provided a written response.

**ISSUE**

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

**ANALYSIS**

- [15] The Landlords included two reasons in the Notice for ending the Tenancy Agreement. The Landlords claim that the Tenant had an unreasonable number of occupants and smoked in the Unit.
- [16] 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.
- [17] 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...”*

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

**Unreasonable Number of Occupants**

- [19] The first reason in the Notice regarding an unreasonable number of occupants 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;*

- [20] The Landlords’ evidence is that the Tenant’s brother (the “Brother”) was supposed to stay in the Unit for two weeks starting around mid-February 2025 but the Brother instead stayed for three months. The Tenant’s evidence is that the Brother stayed in the Unit from around March 28 to May 1, 2025.
- [21] 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*.
- [22] 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)).
- [23] The evidence establishes that the Unit has not been inspected by the Department of Environmental Health regarding non-compliance with the *Accommodation Regulations*.
- [24] The evidence does not establish that the number of occupants in the Unit was unreasonable with regard to fire safety standards.
- [25] I find that the Landlords have provided insufficient evidence to end the Tenancy Agreement under clause 61(1)(c).

**Smoking**

- [26] The second reason in the Notice regarding smoking is based upon clause 61(1)(d) 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:*

- (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.*

- [27] The Landlords stated that they tell all of their tenants not to smoke indoors except for one or two cigarettes per day during snow storms or extreme cold in heavy winter. The Landlords stated that the Tenant has been smoking in the Unit when the weather is not a problem. The Landlords have been receiving complaints from other tenants of the Residential Property.
- [28] The Landlords stated that the former and current tenants above the Unit have complained of smoking in the Unit. The Landlords submitted into evidence email and text message correspondence from the current tenant, who moved in March 1, 2025.
- [29] One of the Landlords ("L1") is a smoker. L1 denied smoking in the Unit with the Tenant.
- [30] The Tenant stated that the Landlords gave him permission to smoke in the Unit. The Tenant stated that he has smoked in the Unit with L1. A few months after the Tenancy Agreement started, the Tenant asked the Landlords to message the Representative regarding smoking in the Unit.
- [31] The Representative is the Tenant's sister. The Representative submitted into evidence the following text message correspondence on April 16, 2024 with the Landlords:

Representative

*"It's [Tenant's] sister [Representative]*

*Sent rent this morning.*

*I have a question*

*I have been asking [Tenant] about smoking in apartment, he has told me that you are allowing him to ,could you please clarify for me.*

*Thanks [Representative]"*

Landlords

*"[Tenant] is allowed to smoke inside the apartment only during heavy winter as I can understand it's extreme cold outside and I myself is a smoker. [emoji] I have requested him to smoke outside when it's spring or summer or when there's no serious wind or snow outside."*

- [32] The Representative stated that she has seen the Tenant and L1 smoking in the Unit.
- [33] TW1 stated that she was an acquaintance of the Tenant that has become a friend. TW1 stated that she saw L1 smoking in the Unit with the Tenant on two occasions. The first occasion was when it was cold outside, around January or February 2025. TW1 stated that the second occasion was around one or two months after the first occasion.

- [34] I have reviewed the evidence of the parties. For the reasons below I find that a breach of clause 61(1)(d) has not been established.
- [35] There is an agreement between the Landlords and the Tenant regarding smoking in the Unit (the "Agreement") evidenced by the April 16, 2024 text messages. The Agreement provides for occasions when the Tenant is permitted to smoke in the Unit and smoking is otherwise prohibited in the Residential Property (including the Unit).
- [36] At the hearing the Landlords stated that the Tenant was permitted to smoke one or two cigarettes per day in the Unit during snow storms or extreme cold. I note that the April 16, 2024 text messages are silent regarding a maximum number of cigarettes.
- [37] In this case there are some grey areas regarding the rules for smoking in the Unit. The evidence establishes that the Tenant is only supposed to smoke in the Unit during snow storms or extreme cold. The quantity of cigarettes is unclear.
- [38] The best practice for landlords and tenants is to clearly state the rules regarding smoking in tenancy agreements. In this case, the Tenancy Agreement pages submitted to the Rental Office does not provide the smoking rules.
- [39] When the smoking rules are not clearly stated, it is more difficult to end a tenancy under clause 61(1)(d).
- [40] Further, I am not satisfied that the Tenant was given sufficient written warning that the Tenant was in violation of the smoking rules for the Tenant's behaviour to have escalated to a level breaching clause 61(1)(d).
- [41] For these reasons I find that the Notice is invalid and the Application is allowed. The Tenancy Agreement will continue and the Tenant can continue living in the Unit.
- [42] The parties provided conflicting evidence regarding whether L1 has smoked in the Unit. However, the validity of the Notice does not depend on this evidence.
- [43] **I note that it is now May 14, 2025 and the extreme cold and winter storms have ended for now. The Tenant cannot smoke inside the Residential Property (including the Unit) until the extreme cold and winter storms return.**

## CONCLUSION

- [44] The Notice is invalid and the Application is allowed.
- [45] The Tenancy Agreement will continue in full force and effect and the Tenant can continue living in the Unit.

## IT IS THEREFORE ORDERED THAT

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

**DATED** at Charlottetown, Prince Edward Island, this 14th day of May, 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.