

INTRODUCTION

- [1] The Landlord seeks termination of the tenancy agreement.
- [2] The Tenant disputes termination of the tenancy agreement.

DISPOSITION

- [3] I find that the Landlord has not established a valid basis for ending the tenancy.
- [4] The tenancy agreement continues in full force and effect.

BACKGROUND

- [5] The Unit is an apartment in a three-unit building (the "Residential Property").
- [6] On July 1, 2019, the parties entered into a written month-to-month tenancy agreement. A \$900.00 security deposit was paid at the beginning of the tenancy. Rent of \$1,019.50 is due on the first day of the month.
- [7] On March 31, 2025, the Landlord served the Tenant with a *Form 4(A) Eviction Notice* with an effective date of April 30, 2025 (the "Notice") for the following reasons:

You or someone you have allowed on the property have disturbed, endangered others, or put the landlord's property at significant risk;
You or someone you have allowed on the property has caused damage to the rental unit;
You have failed to comply with a material term of the tenancy agreement despite written warning.

The particulars of termination stated:

Excessive oil consumption. Windows wide open despite, on several occasions, given written and verbal notices (-16 temps). Potential for pipes to freeze, litres consumed close to our 12-unit building. Island Petroleum indicated this is very excessive oil consumption for 2900 sqft. Excessive traffic up to 36/occurrences/day, people in and out within minutes, damage to carpet and front door. Had to install auto lock. 8 tenants left since.

- [8] On April 1, 2025, the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") to dispute the Notice.
- [9] On April 4, 2025, the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for April 17, 2025.
- [10] On April 15, 2025, the Rental Office shared with the parties a 59-page PDF and ten videos (the "Evidence Package") through TitanFile.
- [11] On April 16, 2025, the parties were notified that the hearing was being postponed.
- [12] On April 24, 2025, the Rental Office mailed and emailed the parties notice of a rescheduled teleconference hearing for May 6, 2025.
- [13] On April 24, 2025, the Rental Office shared with the parties an 8-page PDF and 790 videos (the "Supplementary Evidence Package") through TitanFile.

- [14] On May 6, 2025, the Tenant, the Tenant's two witnesses, the Landlord, the Landlord's representative, and three Landlord witnesses participated in the teleconference hearing. The parties confirmed receipt of the two evidence packages and that all evidence submitted to the Rental Office was included.

ISSUE

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

ANALYSIS

Windows and Oil

- [15] The Landlord stated that the Tenant frequently leaves the Unit's windows open, and this is causing excessive oil consumption in the Residential Property. The Tenant's windows have been open during cold temperatures, and there is the potential for the Unit's pipes to freeze and cause damage. On February 11, 2025, the Landlord gave the Residential Property's tenants written notice and asked them not to leave their windows open. The Landlord stated that the Tenant has continued to leave his windows open despite the written warning.
- [16] The Landlord provided oil consumption reports for the Residential Property from 2018, 2019, 2023, and part of 2025. The Landlord stated that oil consumption has increased since the Tenant moved into the Unit, and the Residential Property uses as much oil as another one of the Landlord's 12-unit buildings. The Landlord submitted seven photographs, dated between February 11 and March 22, 2025, which he stated show the Tenant's open windows during cold temperatures.
- [17] The Tenant disputed that he leaves his windows open for an extended time. The Tenant stated that he mops his floor frequently, and he opens his windows for a short time to help dry the floor and blow dog hair outside. The Tenant stated that the building is also damp, and the open windows help dry out the Unit. The Tenant stated that the Landlord's photos on pages 49 and 50 of the Evidence Package, which show his window open for an hour, are duplicates and should not be relied upon.
- [18] The Tenant disputed that he is causing excessive oil consumption at the Residential Property. The Tenant stated that the whole building consumes oil and not just the Unit. The Tenant stated that the oil consumption records only show four years, and years are missing between 2019 and 2023. He stated that the oil records show that oil consumption has gone down.
- [19] I find that the Landlord has not provided sufficient evidence to establish that the Tenant has seriously jeopardized the lawful right or interest of the Landlord by causing excessive oil consumption at the Residential Property. The evidence establishes that all tenants in the building consume oil, and I find that the Landlord has not established that the Tenant is the sole cause of the alleged excess oil consumption in the Residential Property.
- [20] I find that the Landlord has not provided sufficient evidence to establish that the Tenant's open windows have seriously jeopardized the lawful right or interest or put the Landlord's property at significant risk.
- [21] The parties provided conflicting evidence regarding the length of time the Tenant has left his windows open. Furthermore, I am not satisfied that the Landlord has sufficiently established that the open windows have or would cause damage to the Unit's pipes, based on the evidence submitted.

- [22] I find that the Landlord has not provided sufficient evidence to establish a breach of a material term of the tenancy agreement regarding these matters. I note that the Landlord had served the Tenant with a written warning regarding the oil consumption and open windows. However, neither party provided a copy of the tenancy agreement as evidence. As such, I have insufficient evidence to establish what material terms of the tenancy were agreed upon or allegedly breached.

Smoking

- [23] The Landlord stated that the Tenant is smoking inside the Unit, and it is a non-smoking building. Two of the Landlord's witnesses stated that they had smelled cigarette and cannabis smoke in the Residential Property, and the smell was stronger outside of the Unit's door. One witness stated that one of these instances occurred the day he posted the Notice on the Unit's door.
- [24] The Landlord stated that on February 11, 2025, the Residential Property's tenants were served a written notice stating that the Landlord had received complaints regarding the smell of smoke in the building. The tenants were reminded that it was a non-smoking building and smoking was not allowed. The Landlord alleges that the Tenant is still smoking in the Unit despite the written warning.
- [25] The Tenant disputed that he or anyone else smokes inside the Unit. He stated that he does not smoke cigarettes and he only smokes marihuana outside. He stated that the smell of marihuana smoke may be on his clothes when he returns inside. One of the Tenant's witnesses stated that she attends the Unit frequently and she has not seen anyone smoking in the Unit.
- [26] I find that the Landlord has not provided sufficient evidence to establish a breach of a material term of the tenancy agreement by smoking or that the Tenant has jeopardized the lawful right or interest or put the Landlord's property at significant risk.
- [27] I note that the Landlord's witnesses testified that they could smell smoke outside the Unit's door. However, I find that the testimony only provided details of the smell of smoke, and there is insufficient evidence that anyone witnessed the Tenant smoking inside the Unit or the Residential Property. Furthermore, the Tenant provided a reasonable alternative reason as to why the smell of smoke may be around the Unit.

Carpet Wear

- [28] The Landlord stated that the Tenant has frequent guests attending the Unit, and this is causing wear to the stairway carpet leading to the Unit. The Landlord stated that the carpet was new before the Tenant moved in and is now damaged. The Landlord stated that they installed a security camera inside the main door of the Residential Property, and over 35 days in February and March 2025, the camera documented 795 separate entries and exits to and from the Unit.
- [29] The Tenant disputed that he or his guests are causing wear to the stairway carpet. The Tenant stated that the individuals noted on camera are his dog walker, family, friends, himself, and his son. The Tenant stated that he has never received a warning regarding his guests. He stated that the Landlord does not regularly clean the stairs, which may be a reason for the carpet's wear.
- [30] I find that the Landlord has not provided sufficient evidence to establish that the Tenant or his guests have caused damage to the stairway carpet in the Residential Property. The Landlord stated that the carpet was new before the Tenant moved in; however, the Landlord has not provided sufficient evidence, such as an invoice, inspection report, or photographs, to assist in establishing the condition of the carpet before the Tenant moved in.

- [31] Furthermore, I find that the Landlord has not provided sufficient evidence to establish the current condition of the carpet, such as photographs or a repair invoice. I note that the Tenant did provide one photograph of the carpet. However, I find that this photograph does not depict any damage beyond normal wear and tear.

Other Tenants

- [32] The Landlord stated that the Tenant's frequent guests have caused seven other tenants in the Residential Property to move out since the Tenant moved in.
- [33] The Tenant stated that there was no evidence that any other tenants had moved out because of him or his guests. The Tenant stated that one previous tenant had moved into long-term care, and another tenant had passed away. He stated he was never notified of any complaints regarding his guests.
- [34] I find that the Landlord has not provided sufficient evidence that the Tenant or his guests have significantly interfered with or unreasonably disturbed another occupant or the landlord of the Residential Property. I find that the Landlord has provided insufficient evidence, such as direct witness testimony from previous tenants, to establish that the Tenant or his guests have disturbed other tenants or caused them to move out of the Residential Property.

Garbage

- [35] The Landlord stated that the Tenant is throwing items out of his window. Two of the Landlord's witnesses stated that there is excessive garbage below the Tenant's windows on the ground and the side of the building.
- [36] The Tenant disputed that he throws items out of his windows, and that none of the Landlord's witnesses stated that they saw him throw anything out of his windows. The Tenant stated that none of the Landlord's photographs show any garbage under his windows, and there is no evidence that any garbage around the Residential Property is the Tenant's responsibility.
- [37] I find that the Landlord has not provided sufficient evidence to establish that the Tenant seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant by throwing items out of his windows. The Landlord has not provided sufficient evidence, such as direct witness testimony, to establish that the Tenant was observed throwing items out of his windows. Furthermore, I note that the Landlord's photographs do not show excessive garbage below the Tenant's windows or around the Residential Property.

CONCLUSION

- [38] I find that the Notice is not valid, and the Application is allowed.

IT IS THEREFORE ORDERED THAT

1. The Landlord has not established a valid basis for ending the tenancy.
2. The tenancy agreement continues in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 14th day of May, 2025.

(sgd.) Mitch King

Mitch King
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.