

INTRODUCTION

- [1] This decision determines an application filed with the Residential Tenancy Office (the “Rental Office”) under the *Residential Tenancy Act* (the “Act”).
- [2] The Landlord served an eviction notice to the Tenant seeking to end the tenancy based upon behaviour and damage.

DISPOSITION

- [3] I find that the Tenant and all occupants must vacate the Unit by the timeline ordered below based upon the eviction notice.

BACKGROUND

- [4] The Unit is a one-bedroom, one-bathroom apartment located in a 28-unit building (the “Residential Property”) that was built around December of 2022. The Residential Property has four above ground levels and a finished basement. The Unit is located on the fourth, above ground level.
- [5] In August of 2023 the Tenant originally moved into another rental unit on the fourth level the Residential Property. The Tenant later moved into the Unit.
- [6] On February 2, 2024 the parties entered into a written, month-to-month tenancy agreement (the “Tenancy Agreement”). A security deposit of \$400.00 was paid in three installments. Rent in the amount of \$809.00 is due on the first day of the month.
- [7] On June 14, 2025 a fire occurred on the Unit’s balcony.
- [8] On June 25, 2025 the Landlord served the Tenant with a *Form 4(A) Eviction Notice* with a vacate date of July 31, 2025 for behaviour and damage to the Residential Property (the “Notice”). The particulars of termination state:

“No smoking permitted as per lease and numerous warnings. Smoking on the deck of apartment which has caused a fire resulting in damage to property and endangering other tenants.”

- [9] On July 3, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the “Application”) with the Rental Office disputing the Notice.
- [10] On July 15, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for July 29, 2025 along with a copy of the Application.
- [11] On July 24, 2025 the Rental Office sent the parties a 110-page PDF document (the “Evidence Package”).
- [12] On July 29, 2025 the Tenant and the Landlord’s representative (the “Representative”) participated in a teleconference hearing. The parties confirmed receipt of the Evidence Package and the parties confirmed 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

Legal Basis

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

[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 Agreement 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;

[16] For the reasons below, I find that the Landlord has established a valid basis for ending the Tenancy Agreement.

Determination

[17] I find that the evidence establishes a breach of clause 61(1)(d) because the Tenant put the Landlord’s property at significant risk by smoking on the Unit’s balcony. The Tenant also put the Landlord’s property at significant risk through the buildup up a substantial number of cigarette butts and waste on the Unit’s balcony, being flammable material, which ultimately led to a fire on Saturday, June 14, 2025.

[18] The Tenant provided evidence regarding her personal circumstances, particularly around late October and early November of 2024.

[19] The Tenant stated that she had previously smoked on the Unit’s balcony about once every couple of days. The Tenant stated that by Christmas of 2024 she had almost stopped smoking. The Tenant stated that the last time she smoked on the Unit’s balcony was June 10, 2025, being four days before the fire. On this occasion the Tenant smoked one-and-a-half cigarettes.

[20] On June 14, 2025 around 11:30 a.m. the Tenant left the Unit and travelled to the Alberton or O’Leary area.

[21] Sometime before 1:00 p.m. a fire occurred on the Unit’s balcony. The Residential Property’s fire alarm was activated, the sprinkler system on the Unit’s balcony discharged water, and smoke emanated from this area. The Fire Department and the Police arrived. The Representative stated that the fire was scary for other tenants, they were very upset, and the fire damaged the Residential Property.

- [22] The Tenant was in the Alberton area at the time that she learned from the Landlord about the fire on the Unit's balcony.
- [23] The parties stated that there were hundreds of cigarette butts on the balcony at the time of the June 14, 2025 fire.
- [24] The Landlord's photographs of the balcony show a significant buildup of waste, including a mug and other containers full of cigarette butts. From these photographs it appears that the Tenant had engaged in a significant amount of smoking on the Unit's balcony.
- [25] The Landlord submitted into evidence an email from a municipal fire inspector dated July 15, 2025 which states in part:
- "Due to the significant accumulation of garbage on the deck, including a large number of discarded cigarette butts, it is probable that a discarded cigarette butt was the accidental source of the fire."*
- [26] The Tenant stated that, after the fire, she spoke with a different municipal fire inspector who told her that the cigarette butts were a lot like sawdust and the pile on the Unit's balcony could have combusted at any point.
- [27] The evidence establishes that the Tenant put the Landlord's property at significant risk.

Smoking Prohibitions

- [28] I find that the Tenancy Agreement prohibited the Tenant from smoking inside of the Residential Property, including the Unit's balcony.
- [29] Schedule "D" of the Tenancy Agreement states in part *"SMOKING IS NOT PERMITTED ON THE PROPERTY."* This page of the Tenancy Agreement was initialed and agreed to by the Tenant.
- [30] The Representative stated that this type of no smoking clause is contained in the tenancy agreements for all rental units in the Residential Property.
- [31] The Landlord submitted into evidence photographs of the Residential Property's hallways showing large red, white and black signs which state *"THIS IS A SMOKE FREE PROPERTY Thank You For Not Smoking."*
- [32] I find that the Tenant smoking on the Unit's balcony and the accumulation of a substantial number of cigarette butts occurred in the context of clear smoking prohibitions inside of the Residential Property.
- [33] Therefore, the Tenant put the Landlord's property at risk in the context of acts prohibited by the Tenancy Agreement.

Tenant Submissions

- [34] Tenant essentially argued that the Landlord did not sufficiently enforce the smoking prohibitions. The Tenant provided evidence regarding a specific instance where persons briefly staying in the Unit were given permission by another representative of the Landlord to smoke cigarettes on the balcony of a rental unit.
- [35] However, I am satisfied that the Landlord has taken reasonable steps to enforce the smoking prohibitions in the Residential Property.

- [36] The Representative stated that around February of 2024 a building wide memo was provided to the tenants because of smoking in the Residential Property (the "Memo"). The exact source of the smoking was unclear. Based upon the Representative's communications with the Tenant, the Memo may have been removed from the Tenant's door before the Tenant could view it. The Tenant stated that she did not receive the Memo.
- [37] The Representative read out the Memo during the hearing, stating as follows:
- "Smoking Memo*
- To all tenants [Residential Property] Re. Smoking Policy First Warning*
- Complaint has been received regarding smoking in the building. All tenants are reminded we have a smoke free policy in all areas of the building including in your apartment. Smoking on the premises is a violation of your lease agreement and this applies to you and any visitors to your apartment unit.*
- All tenants are to respect the rights and privileges of all residents.*
- Failure to adhere to the smoke free policy may result in the termination of your lease in addition to the cost of any repairs for damage sustained to the premises as a result of smoking."*
- [38] The Representative stated that on February 11, 2025 there was a building wide tenant meeting that the Representative and the Tenant attended. The purpose of the meeting was to educate tenants on being good tenants and tenant responsibilities. Schedule "D" of the Tenancy Agreement, which includes the smoking prohibitions, was specifically discussed. There was also an earlier building wide tenant meeting that the Representative did not attend.
- [39] The Representative questioned whether another Landlord representative had given anyone permission to smoke on a rental unit's balcony. The Representative stated that this would have been completely out of character and none of the Landlord's other staff that the Representative had spoken with had any recollection of this conversation. The Representative stated that the other representative was currently off for the summer and was unavailable for the hearing.
- [40] The Representative stated that other tenants had previously been evicted from the Residential Property for fire related matters.
- [41] The Tenant also argued that she had not received previous warnings not to smoke.
- [42] I note that the *Act* does not require a landlord to first provide a specific warning prior to serving an eviction notice under clause 61(1)(d).
- [43] The Tenant provided detailed testimony and documents regarding her personal circumstances and the impact if the Tenant is required to move out of the Unit.
- [44] While I recognize the significant challenges to the Tenant posed by the end of the Tenancy Agreement, I also recognize that the Tenant smoking on the Unit's balcony and the accumulation of flammable material on the Tenant's balcony posed a significant hazard to the occupants of the 27 other rental units in the Residential Property and the building itself.
- [45] I also note that this significant risk occurred in the context of a prohibited smoking activity that the Tenant engaged in that the Tenant had previously, specifically agreed to refrain from doing.
- [46] During the hearing the Representative discussed a number of resources available for the Tenant to find alternative accommodations, including resources provided by the Landlord.

- [47] For the reasons above, I find that the Tenant put the Landlord's property at significant risk and therefore the Landlord has a valid basis for ending the Tenancy Agreement.
- [48] As the Landlord has established a valid reason for ending the Tenancy Agreement under clause 61(1)(d), I will not consider the Landlord's second reason under clause 61(1)(f).
- [49] At the hearing the Representative stated that the Landlord was willing to extend the end of the Tenancy Agreement to the end of August 2025. As a result, the Tenant and all occupants must vacate the Unit by the timeline below.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the parties will terminate effective **5:00 p.m. on August 31, 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 31st day of July, 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 **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.