

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 because of smoking inside of the Unit.

DISPOSITION

- [3] I find that the Notice is invalid and the tenancy will continue.

BACKGROUND

- [4] The Unit is a two-bedroom, one-bathroom apartment with an enclosed deck located in a four-unit building (the "Residential Property") that the Landlord has owned since 2016. There are three rental units on the ground level, including the Unit, and one upper level unit.
- [5] The Landlord and the Tenant entered a rental agreement near the beginning of May 2022. The parties dispute whether the original agreement was oral or written. The parties agree that the tenancy is month-to-month, a security deposit was not required and the monthly rent is currently \$1,030.00, due on the first day of the month.
- [6] The Tenant lives in the Unit with an occupant ("BP").
- [7] On October 5, 2024 the parties signed an agreement which includes most of the details summarized above plus additional terms.
- [8] On July 7, 2025 the Landlord served the Tenant with a *Form 4(A) Eviction Notice* with a vacate date of August 7, 2025 for smoking in the Unit (the "Notice").
- [9] I note that the vacate date is automatically corrected to August 31, 2025 under section 54 of the *Act* to comply with the minimum notice period in subsection 61(3).
- [10] On July 9, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Rental Office disputing the Notice.
- [11] On July 15, 2025 the Rental Office sent the parties notice of a teleconference hearing scheduled for August 14, 2025 along with a copy of the Application.
- [12] On August 7, 2025 the Rental Office sent the parties an evidence package.
- [13] On August 12, 2025 the Rental Office sent the parties notice of a teleconference hearing rescheduled for August 20, 2025 along with a copy of the Application.
- [14] On August 13, 2025 the Rental Office sent the parties an updated 23-page evidence package.
- [15] On August 20, 2025 the Tenant and the Landlord participated in a teleconference hearing. I reviewed the evidence package with the parties and there did not appear to be any missing evidence that had been previously submitted to the Rental Office.

ISSUE

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

ANALYSIS**Legal Basis**

[16] 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.

[17] In this case the only reason relates to smoking inside of the Unit.

[18] 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...”

[19] The Landlord seeks to end the tenancy under clause 61(1)(h) 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:

(h) the tenant

(i) has failed to comply with a material term of the tenancy agreement, and

(ii) has not corrected the situation within a reasonable time after the landlord has given written notice to do so;

[20] For the reasons below, I find that the Notice is invalid.

Determination

[21] This is the first Rental Office dispute between the parties and the Notice is the first eviction notice that the Landlord has served to the Tenant.

[22] The evidence establishes that the Tenant, BP and any other occupants are prohibited from smoking inside of the Unit.

[23] The Landlord provided evidence regarding an incident on May 20, 2025 where the Landlord warned the Tenant regarding smoking inside of the Unit. The Landlord provided evidence regarding smoking complaints from other tenants of the Residential Property.

[24] However, I find that insufficient evidence has been presented to establish that the Tenant or BP has been smoking inside of the Unit to support termination of the tenancy under clause 61(1)(h).

[25] The Tenant stated that she quit smoking 25 years ago. The Tenant stated that BP smokes outside near the back entrance. The Tenant provided evidence that essentially any smoking by BP inside of the Unit was isolated.

[26] None of the other Residential Property tenants provided written statements or participated in the teleconference hearing to provide testimony and answer questions regarding smoking inside of the Unit.

[27] I have reviewed the particulars of the Application and I do not consider it an admission of smoking by the Tenant. The Tenant is disputing that she received the May 20, 2025 warning note from the Landlord.

[28] I do not have sufficient evidence to find that there has been smoking inside the Unit except for isolated smoking by BP.

- [29] For these reasons, I find that the Notice is invalid.
- [30] **The Tenant and BP must ensure that all occupants do not smoke inside of the Unit. Otherwise, the Landlord may be able to end the tenancy in the future for smoking inside of the Unit.**

Additional Warning to the Tenant and BP

- [31] The evidence package discloses unacceptable text-message communications that BP sent to the Landlord.
- [32] BP should consider whether it would be in BP's and the Tenant's best interests for BP to apologize to the Landlord regarding BP's unacceptable text-messages.
- [33] BP must ensure that all of BP's future communications with the Landlord are respectful.
- [34] **Otherwise, BP's behaviour may cause the Tenant and BP to be forced to leave the Unit.**

Tenancy Agreement Content

- [35] Since April 8, 2023 landlords on Prince Edward Island have been required to prepare a written tenancy agreement containing specific information.
- [36] Subsections 11(1) and (2) of the *Act* state:
- (1) *A landlord shall prepare a written tenancy agreement in respect of a tenancy that is entered into on or after the date this Act comes into force.*
 - (2) *The landlord shall ensure that the tenancy agreement complies with the requirements of this Act and the regulations and includes*
 - (a) the provisions set out in Division 4;*
 - (b) the correct legal names of the landlord and tenant;*
 - (c) the address of the rental unit;*
 - (d) the date the tenancy agreement is entered into;*
 - (e) the address for service and telephone number of the landlord, or the landlord's agent, and the tenant;*
 - (f) the services and facilities included in the rent;*
 - (g) the amount of rent that was charged, and the services and facilities that were provided, to the previous tenant of the rental unit, unless there was no previous tenant;*
 - (h) the name and contact information of any person the tenant is to contact for emergency repairs; and*
 - (i) the agreed terms in respect of*
 - (i) the date on which the tenancy starts,*
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis,*
 - (iii) if the tenancy is a fixed-term tenancy, the date on which the term ends,*
 - (iv) the amount of rent payable for a specified period,*
 - (v) the day on which the rent is due and the frequency of payment,*
 - and*
 - (vi) the amount of any security deposit and the date the security deposit was or is required to be paid.*
- [37] The Landlord must ensure that all tenancy agreement content complies with the *Act*.

[38] I note that part of the October 5, 2024 agreement states:

"If either party wishes to terminate the tenancy then 30 days notice is required to be given to the other party."

[39] The *Act* does not allow landlords to end a tenancy agreement solely by providing a 30-day notice without a reason permitted by the *Act*.

[40] I note that section 55 of the *Act* provides tenants with a right to end tenancy agreements with notice but without a reason.

[41] There is no comparable section for landlords.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid and the tenancy will continue.

DATED at Charlottetown, Prince Edward Island, this 20th day of August, 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.