INTRODUCTION

[1] This decision determines an application filed with the Residential Tenancy Office ("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 the Unit.

DISPOSITION

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

BACKGROUND

[4] The Unit is an apartment in a multi-unit building ("Residential Property").

[5] On September 23, 2019, the Landlord and the Tenant entered into a written month-to-month tenancy agreement for the Unit, which started on September 21, 2025. Rent is $900.00, due on the first day of the month. The Representative was unsure if a security deposit was paid.

[6] On May 23, 2025, the Landlord served the Tenant with a *Form 4(A) Eviction Notice* with a vacate date of June 30, 2025, for smoking in the Unit ("Notice").

[7] On July 21, 2025, the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* ("Application") with the Rental Office seeking vacant possession of the Unit and for the Sheriff to put the Landlord in possession.

[8] On August 6, 2025, the Rental Office emailed the parties notice of a teleconference hearing scheduled for August 21, 2025.

[9] On August 12, 2025, the Rental Office sent the parties a 15-page PDF evidence package.

[10] On August 21, 2025, the Landlord's representative ("Representative") participated in a teleconference hearing. I called the Tenant; however, the Tenant's phone number was not in service, and I was unable to leave a voicemail. The hearing proceeded in the Tenant's absence. The Representative stated that all the evidence the Landlord submitted to the Rental Office was included in the evidence package.

[11] On August 22, 2025, the Rental Office shared additional evidence with the parties, which the Tenant had submitted to the Rental Office after the evidence deadline. No further submissions were received from the parties.

ISSUE

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

ANALYSIS

[12] The Representative's evidence is as follows.

[13] On February 6, 2025, the Representative was working in the apartment above the Tenant's Unit. The Representative could smell cigarette smoke in the apartment and believed that it was coming from the Unit. The Representative sent the Tenant a text message which stated: "*Hey [*Tenant*], someone is smoking in the building. If it's you please smoke outside. The smell is travelling up here to where we are working*."

[14] The Tenant replied to the Representative, stating: "Ok *sorry*".

[15] On May 13, 2025, the Representative received a complaint from another tenant. The complaining tenant told the Representative that he could smell cigarette smoke in his apartment, and he believed that the Tenant was smoking in the Unit.

[16] The Representative sent the Tenant a written warning stating not to smoke in the Unit or a "Notice of Termination" would be served. The Representative did not speak to the Tenant or attend the Unit at that time.

[17] The Tenant replied to the Representative, stating: "*Yes I received it thanks sorry it wont hapoen again I was not here I had a friend stay here while I was gone and she had a few ppl here it wont happen again."*

[18] On May 22, 2025, the Representative received another complaint from the same tenant, who had previously complained on May 13, 2025, stating that he could smell cigarette smoke in his apartment. The Representative attended the complaining tenant's apartment, and she could smell cigarette smoke inside the apartment.

[19] The Representative did not speak to the Tenant or attend the Unit at that time. On May 23, 2025, the Representative served the Tenant with the Notice.

[20] The Representative had inspected the Unit on different occasions. The Representative had not observed any smoking materials inside the Unit during the inspections.

[21] The Landlord seeks to end the tenancy under clauses 61(1)(d) and (h) 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;*
>
> *(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.*

[22] 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.

[23] In this case, the only reason relates to smoking inside the Unit.

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

[26] The Representative stated that she received two complaints from another tenant who believed the Tenant had smoked in the Unit because he could smell cigarette smoke in his apartment. However, the complaining tenant did not participate as a witness at the hearing.

[27] When a landlord is evicting a tenant for cause or disturbing others, the best practice is for the landlord to have the affected persons participate in the hearing. The parties or witness would affirm to tell the truth, provide their testimony, and be available to answer questions regarding their evidence. In this case, the complaining tenant did not participate to provide further context to his complaints.

[28] The Representative stated that on February 6, 2025, she smelled cigarette smoke in the apartment above the Unit, and the Tenant apologized after the Representative messaged her about the smell. However, the Representative did not attend the Unit at that time to investigate whether anyone had been smoking in the Unit.

[29] The Representative stated that after serving the warning letter to the Tenant on May 13, 2025, the Tenant apologized and stated that she had been away and people had been staying in the Unit. However, the Representative did not attend the Unit to investigate whether anyone had been smoking in the Unit after she had received the complaints on May 13 and May 22, 2025.

[30] The Representative also stated that she had never seen any smoking materials in the Unit during her inspections.

[31] Therefore, I find that the Landlord has not provided sufficient evidence to establish that the Tenant has contravened clauses 61(1)(d) or (h) of the Act.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid, and the Application is denied.

2. The tenancy agreement will continue, and the Tenant can continue to live in the Unit.

DATED at Charlottetown, Prince Edward Island, this 28th day of August, 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.