

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 seeks an order requiring the Tenants to vacate the Unit for non-payment of rent and failure to comply with a material term of the tenancy agreement.

DISPOSITION

- [3] I find that the Tenants must vacate the Unit by the timeline below.

BACKGROUND

- [4] The Unit is an apartment in a multi-unit building.
- [5] The Landlord and the Tenants entered into a written, fixed-term tenancy agreement from April 1, 2025, to April 1, 2026. A security deposit of \$1,000.00 was paid on April 1, 2025. Rent of \$1,300.00 is due on the first day of the month.
- [6] On July 4, 2025, the Landlord served the Tenants with a *Form 4(A) Eviction Notice* with an effective date of August 5, 2025 (the "Notice") for non-payment of rent of \$2,000.00 and for failing to comply with a material term of the tenancy agreement.
- [7] The particulars of termination stated:
- "She not payed rent + not clean unit [unclear] with rate. Not put any thing in pin throw around lot."*
- [8] I note that, regarding the failure to comply with a material term of the tenancy agreement, the correct effective date is August 31, 2025, to comply with the minimum notice period as outlined in subsection 61(3) of the Act. The effective date is automatically changed under section 54.
- [9] On August 12, 2025, the Landlord filed an amended *Form 2(B) Landlord Application to Determine Dispute* (the "Landlord Application") with the Rental Office seeking vacant possession of the Unit and for the Sheriff to put the Landlord in possession, which is determined in this decision. The Landlord Application also seeks rent owing, which is the subject of Order LD25-359.
- [10] On August 21, 2025, the Rental Office sent the parties notice of a teleconference hearing scheduled for September 4, 2025.
- [11] On August 28, 2025, the Rental Office emailed the parties an evidence package.
- [12] On September 4, 2025, neither party called into the hearing, and the hearing did not proceed.
- [13] On September 10, 2025, the Rental Office sent the parties notice of a rescheduled teleconference hearing for September 18, 2025.
- [14] On September 18, 2025, the Landlord joined the teleconference hearing. I telephoned the Tenants and left a voicemail message. The hearing proceeded in the Tenants' absence. The Landlord confirmed receipt of the evidence package and confirmed that all evidence that the Landlord submitted to the Rental Office was included.
- [15] After the hearing, both parties were permitted to submit additional evidence with a deadline of September 26, 2025, at 4:00 pm.

ISSUE

- A. Must the Tenants and all occupants vacate the Unit?

ANALYSIS**Landlord's evidence and submissions**

- [16] The Landlord stated that the Tenants paid rent for April and May 2025. The Tenants did not pay rent for June and July 2025, so he served the Tenants with the Notice. The Landlord submitted a photograph of the Notice posted to the Unit's door.
- [17] The Landlord stated that the Tenants left the Unit around July 30, 2025, and he has not had any contact with the Tenants since that time.
- [18] The Landlord stated the Tenants have also not paid rent for August or September 2025, and he is seeking possession of the Unit. He stated the Tenants still have personal property in the Unit.

Tenants' evidence and submissions

- [19] The Tenants stated that they had paid the Landlord rent directly for June and July, and Social Services paid for August and possibly September. They stated that the Landlord has not provided them with a copy of the tenancy agreement, and they did not receive a copy of the Notice.
- [20] The Tenants submitted a copy of a \$600.00 e-Transfer to the Landlord, dated May 30, 2025.
- [21] The Tenants submitted copies of payment notices, which were provided to the Tenants by Social Services. The payment notices show that Social Services paid the Landlord \$1,300.00 on July 31, 2025, and \$1,300.00 on August 29, 2025, on the Tenants' behalf.
- [22] One of the Tenants stated that she does not feel safe in the Unit and would like to move out. She stated that she is seeking to remove her personal property from the Unit.

Rent

- [23] The Landlord's first reason in the Notice for terminating the tenancy is under subsection 60(1) of the Act, which states:

A landlord may end a tenancy if rent is unpaid after the day it is due, by giving a notice of termination effective on a date that is not earlier than 20 days after the date the tenant receives the notice.

- [24] The Landlord stated that the Tenants did not pay rent for June, July, August, or September 2025. I note that the Landlord submitted no documentary evidence, such as a rent ledger, bank statements, or rent receipts, to assist in establishing when the Tenants did or did not pay rent.
- [25] However, the Tenants stated that they have paid the rent every month. The Tenants submitted copies of three rent payments made to the Landlord: \$600.00 on May 30, 2025, \$1,300.00 on July 31, 2025, and \$1,300.00 on August 29, 2025. I note that the Tenants did not specify which months these rent payments covered.
- [26] In this matter, the Landlord has the burden of proving, on a balance of probabilities, their reason(s) for terminating the tenancy agreement. This means the Landlord must provide sufficiently clear and convincing evidence to prove their claim(s).

- [27] I find that the parties provided conflicting evidence regarding when rent was paid and the amounts that may have been paid.
- [28] The Landlord stated that he had received no rent from July to September; however, he provided no documentary evidence to support his claim.
- [29] The Tenants stated that they paid rent each month and provided documentary evidence showing that they paid the Landlord in May, July, and August.
- [30] Therefore, based on the conflicting evidence presented by the parties and the Landlord's insufficient supporting rent payment documents, I find that the Landlord has not established that the tenancy agreement must be terminated due to failure to pay rent.

Material Term

- [31] The Landlord's second reason in the Notice for terminating the tenancy is under clause 61(1)(h) of the Act, which states:
- (1) *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.*
- [32] During the hearing, the Landlord provided no testimony regarding a breach of a material term of the tenancy agreement. The Landlord did submit into evidence photographs of what appears to be the inside of the Unit, showing the Unit in disarray and full of garbage. However, there is insufficient evidence that the Landlord gave the Tenants written notice to comply with a material term of the tenancy agreement regarding the condition of the Unit or for any other reason.
- [33] I find that the Landlord has not established that the Tenants failed to comply with clause 61(1)(h) of the Act.
- [34] Therefore, I find that the Notice is invalid.
- [35] However, although the Notice is invalid, the Tenants did not file an application with the Rental Office disputing the Notice under subsection 60(5) of the Act. Furthermore, one of the Tenants notified the Rental Office that they are seeking an end to the tenancy agreement.
- [36] I find that the tenancy has been terminated by mutual agreement under subsection 51(3) of the Act. The Tenants and all occupants must vacate the Unit by the time and date below.
- [37] I note that in Order LR25-44, the Island Regulatory and Appeals Commission found that parties can mutually terminate a tenancy agreement after an eviction notice has been served.
- [38] The Tenants are reminded that they must retrieve their personal property from the Unit before the termination of the tenancy agreement.

IT IS THEREFORE ORDERED THAT

1. The tenancy between the parties will terminate effective **5:00 p.m. on October 6, 2025.**
2. The Tenants 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 29th day of September, 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 **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.