

INTRODUCTION

- [1] This decision addresses two applications filed by the Tenant and the Landlord with the Residential Tenancy Office (the “Rental Office”) pursuant to the *Residential Tenancy Act*, cap. R-13.11 (the “Act”).
- [2] The Landlord served an eviction notice to the Tenant for putting the property at significant risk under clause 61(1)(d) of the *Act*.
- [3] The Tenant attempted to dispute the eviction notice under subsection 61(5), and seeks a determination deeming service under subsection 100(3).
- [4] The Landlord seeks an order for the Sheriff to put the Landlord in vacant possession of the Unit.

BACKGROUND

- [5] The Unit is a two-bedroom, one-bathroom apartment in a 22-unit building (the “Residential Property”).
- [6] On December 1, 2019, the parties signed a written, monthly tenancy agreement for the Unit. Rent in the amount of \$1,484.00 is payable on the first day of the month plus a parking fee. A \$200.00 security deposit was transferred from a previous tenancy within the Residential Property.
- [7] On February 23, 2026, the Landlord served the Tenant with a *Form 4(A) Eviction Notice* with a vacate date of April 1, 2026 (the “Notice”) for behaviour that put the property at significant risk. The particulars of termination state:

“The patio door was left wide open. You left for travels in October and the door was found open January 30th. The Unit was found to be very cold and this posed a serious risk of pipes freezing and flooding. Damage would have been significant.”
- [8] On March 5, 2026, at 10:04 p.m. the Tenant’s lawyer (“Counsel”) e-mailed the Rental Office and the Landlord a *Form 2(A) Tenant Application to Determine Dispute* (the “Tenant Application”) disputing the Notice. The Tenant Application was not filed until March 6, 2026 by operation of law.
- [9] On March 25, 2026, the Rental Office e-mailed Counsel advising that the Tenant Application would not be accepted due to the legislated 10-day timeline.
- [10] On March 26, 2026, Counsel e-mailed the Rental Office and carbon copied the Landlord requesting the Director to exercise discretion and deem service under subsection 100(3) of the *Act*.
- [11] On April 1, 2026, the Rental Office took Counsel’s request under consideration as a preliminary matter, and would update the parties with further hearing instructions.
- [12] On May 13, 2026, the Landlord e-mailed the Rental Office and the Tenant a *Form 2(B) Landlord Application to Determine Dispute* (the “Landlord Application”) seeking vacant possession of the Unit.
- [13] On May 14, 2026, the Rental Office provided the parties notice of a tele-hearing scheduled for May 26, 2026.
- [14] On May 19, 2026, the Rental Office provided the parties a TitanFile link to a 105-page PDF and 1-video-recording evidence package.

- [15] On May 26, 2026, the Tenant, Counsel and the Landlord's representative (the "Representative") participated in the tele-hearing. The parties confirmed that they received the evidence package and confirmed that all evidence submitted was included in the evidence package.

DISPOSITION

- [16] I do not have the legislative authority under the *Act* to extend the ten-day filing deadline. The Tenant Application disputing the Notice is invalid.
- [17] The Landlord waived their right to rely on the deeming provisions of the *Act*.
- [18] The evidence does not establish a valid reason for eviction. The Notice is invalid and the tenancy will continue in full force and effect.

PRELIMINARY ISSUE

- A. Can the Tenant Application be extended to dispute an eviction under subsection 100(3) of the *Act*?

PRELIMINARY ANALYSIS & FINDINGS

- [19] It is not in dispute that the Landlord e-mailed the Tenant the Notice on February 23, 2026 before 5:00 p.m. to end the tenancy under clause 61(1)(d).
- [20] It is further undisputed that Counsel, on behalf of the Tenant, e-mailed the Rental Office and the Landlord on March 5, 2026, at 10:04 p.m. the Tenant Application.
- [21] The e-mail was sent to the Rental Office after its hours of operation. This means that the Tenant Application was not filed with the Rental Office until March 6, 2026, in accordance with subsection 33(7) of the *Interpretation Act*.
- [22] The Tenant Application was filed under subsection 61(5), which states:

A tenant may dispute a notice of termination under this section by making an application to the Director under section 75 within 10 days after the date the tenant receives the notice.

- [23] Subsections 75(1) and 76(2) of the *Act* state:
- (1) *Except as otherwise provided in this Act, a tenant, a landlord or a person representing a tenant or landlord may, during or within six months after termination of a tenancy agreement, make an application to the Director to determine*
 - (a) *a question arising under this Act or the regulations;*
 - (b) *whether a provision of a tenancy agreement has been contravened; or*
 - (c) *whether a provision of this Act or the regulations has been contravened.*
 - (2) *A person who makes an application to the Director shall give a copy of the application to the other party in accordance with section 100 within five days of making the application.*
- [24] Counsel for the Tenant seeks a determination that despite the Tenant Application being filed on the eleventh day after receiving the Notice, the Tenant Application may be considered under the discretionary power outlined in subsection 100(3), which states:

Despite subsection (1), the Director may order that a document not served in accordance with subsection (1) was sufficiently given or served for the purpose of providing notice to an affected person under this Act.

- [25] Counsel essentially argues that exercising such discretion under subsection 100(3) would be consistent with the spirit and intent of the statutory scheme, which recognizes housing as a human right and that a unilateral eviction of a tenant by their landlord is a serious matter.
- [26] Further, Counsel cited *Caceres v. Canada (Minister of Citizenship and Immigration)* commenting that the Court was critical of the respondent, whom was a decision-making board, for disregarding the written submissions of a party on the sole basis of the delay of their delivery. The Court stated: “*It was a breach of natural justice based on a mere technicality.*”¹
- [27] Counsel also cited Order LR23-79 where the Island Regulatory and Appeals Commission (the “Commission”) determined the merits of an eviction notice, despite the tenants not filing an application to dispute.² Counsel argued that the evidence establishes that the Tenant does not accept the termination of the tenancy and actively sought to dispute the Notice, despite being five hours late filing.
- [28] The Representative agreed with Counsel’s position, stating: “*Well, I would have to agree, actually, with [Counsel], that it would be sort of shameful for a technicality to be sort of a reasoning to uproot somebody, and that’s not really my intention, per say.*”
- [29] For the reasons below, I find that I do not have the legislative authority under the *Act* to extend the ten-day filing deadline under subsection 61(5). As a result, the Tenant Application to dispute the Notice is invalid.
- [30] I find that subsection 100(3) does not provide parties an extension of their statutory time limits under the *Act*. Tenants have 10 days after receiving an eviction notice to make an application to the Rental Office under subsection 75(1) to dispute an eviction notice.
- [31] Subsection 76(2) requires that party who makes an application to the Rental Office must also serve the other party within five days in accordance with section 100.
- [32] Subsection 100(3) provides the Director with the discretion that in circumstances where a document was not served to the other party in accordance with subsection 100(1) that the document was sufficiently given or served to the other party for the purposes of providing notice.
- [33] I find that the issue of serving a document – the Tenant Application, is not in question in this case. The evidence establishes that the Landlord was sufficiently served the Tenant Application in accordance with subsection 100(1). Therefore, subsection 100(3) is not triggered in these circumstances. If it was triggered, then it would still not extend to the Tenant’s ability to dispute an eviction notice under subsection 61(1).
- [34] What is at issue in this case is that the Tenant made an application to the Rental Office outside of the legislated ten-day period. Subsection 85(1) of the *Act* provides me powers after hearing an application. I find that subsection 85(1) does not allow me to extend filing deadlines for parties, only extend or reduce notice periods (see clause 85(1)(n)).
- [35] Counsel referenced *Caceres*, which pertains to late submissions being denied. In this case, submissions and evidence have not been denied. Instead, there is a statutory scheme in place which must be applied when considering filing timelines.
- [36] Counsel also referenced Order LR23-79. However, in that case, there were defects in the eviction notice, which the Commission found that the landlord could not rely on the deeming provisions of the *Act*, despite the tenants not filing an application to dispute the eviction. For these reasons, the Tenant Application is denied.

¹ *Caceres v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 843, Para. 23.

² *Geoff Dobson and Barb Dobson v PEI Housing Corporation*, 2023 PEIRAC 48, Paras. 11, 12, 16 & 17.

ISSUE

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

ANALYSIS & FINDINGS**Deeming Provisions**

[37] For the reasons below, I find that the Landlord waived their right to rely on the deeming provisions under 61(6) of the *Act*.

[38] Subsection 61(6) states:

Where a tenant who has received a notice of termination under this section does not make an application to the Director in accordance with subsection (5), the tenant
(a) is deemed to have accepted that the tenancy ends on the effective date of the notice of termination; and
(b) shall vacate the rental unit by that date.

[39] As mentioned above, I have found that the Tenant did not file the Tenant Application in time to dispute the Notice.

[40] In paragraph [29] of this decision, I summarized the Representative's position regarding the Tenant disputing the Notice and the deeming provisions, despite clearly wanting to dispute the eviction. However, I find that the Representative did not intend or want to rely upon the deeming provisions to obtain an eviction order.

[41] In Order LR26-02 the Commission observed that section 5 of the *Act* protects tenants against waiver, but there is no corresponding protection for landlords against waiver.³

[42] Therefore, I find that the Landlord has waived their right to rely upon the deeming provisions. In this case, I will determine the Notice and the eviction on its merits.

Merits for Eviction

[43] In eviction disputes, the Landlord has the onus to prove that there is valid reason to end the tenancy on the civil standard of a balance of probabilities.

[44] The Landlord's reason for terminating the tenancy in the Notice is under clause 61(1)(d), which states:

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.

[45] In Order LR26-16 the Commission made the following comments regarding a landlord ending a tenancy:

³ *Sara Kelly v Hilary Wood and Anthony McLennon*, 2026 PEIRAC 2. Para. 29.

“The Commission approaches the termination of a tenancy as a serious matter, given the significant impact an eviction has on a tenant’s housing security. As noted in prior decisions, a landlord seeking to end a tenancy must provide clear, cogent, and compelling evidence to justify termination.

Therefore, the burden rests on the Landlord to establish, on a balance of probabilities, that one or more of the grounds for termination under section 61(1) of the Act have been met. This requires demonstrating that it is more likely than not that the alleged conduct occurred and that it meets the statutory threshold for eviction.”⁴

Landlord’s evidence

- [46] The Representative stated that the maintenance crew at the Residential Property noticed the Unit’s patio door was open on January 30, 2026. The Representative stated that the Tenant was away travelling since October 2025. The Representative stated that the patio door being left open during the winter months poses a significant risk to the Unit.
- [47] The Representative stated that the Tenant is difficult to contact because he does not respond to phone calls, text messages or e-mails. The Representative stated that the Unit and parts of the Residential Property require repairs, and the Tenant agreed to e-mail the Representative a list of the repairs. The Representative stated that the maintenance crew does not feel comfortable entering the Unit without written confirmation from the Tenant.
- [48] The Representative stated that because the Tenant travels frequently, there is a concern that nobody is watching over the Unit. The Representative stated that the Tenant lacks accountability. The Representative stated that when he asked the Tenant about the patio door being left open, the Tenant claimed there was a break-in. The Representative stated that he did not believe the Tenant’s claim.
- [49] The Representative stated that the Tenant has not caused any damage to the Unit, and was fortunate that the pipes did not freeze while the patio door was open during the winter months.

Tenant’s evidence

- [50] The Tenant provided a signed affidavit and testimony at the tele-hearing regarding his work-related travelling obligations and steps taken to secure and prepare the Unit during his departure.
- [51] Counsel provided written submissions and arguments disputing the reason for eviction in the Notice.
- [52] The Tenant’s position is that the Unit was not put significantly at risk and that the Tenant is accommodating to the Representative and maintenance crew when needing to work inside the Unit. The Tenant stated that it is possible someone broke into the Unit through the patio door, which would explain it being found open in January 2026. The Tenant stated that he intended to return to the province and the Unit in January, 2026; however, due to bad weather, was delayed. The Tenant stated that he filed a police report and inventory list of items that have been removed from the Unit.

Determination of the Notice

- [53] The Commission has observed that ending a tenancy is a serious matter and, as a result, a landlord must bring forward compelling evidence to warrant the end of a tenancy.
- [54] In this case, the Landlord seeks to end the tenancy due to the Tenant putting the Unit at significant risk.

⁴ *Margaret Clow v. Montague Housing Authority* 2026 PEIRAC 21, paras 49 & 50.

- [55] For the reasons below, I find that the Landlord's evidence does not establish that the Tenant's actions or the Tenant's absence from the Unit have put the Unit at significant risk. Therefore, the Notice is invalid and the Landlord Application is denied.
- [56] The Landlord's primary concern rose from an open patio door in the Unit during the winter months. I agree with the Landlord's position that the risk of freezing pipes is a significant risk to the Unit. However, I find that the Landlord's evidence does not establish that the Tenant purposely or negligently left the patio door "wide open."
- [57] The Tenant's evidence establishes that it was possible that the Unit was broken into while the Tenant was away. The Tenant filed a police report because items were missing from the Unit. I further find that the evidence presented does not establish that the Tenant caused any damage.
- [58] The Landlord's concerns of broken trust, lack of consistent communication, accountability and concerns surrounding the Tenant's time spent in the Unit are not reasons that justify an eviction.
- [59] Therefore, the Notice is invalid, the Landlord Application is denied and the tenancy will continue in full force and effect.

Costs

- [60] Counsel for the Tenant requested their costs in this matter. The Rental Office is authorized to award costs to a successful party per clause 85(1)(q) of the *Act*. In Order LR24-43, the Commission commented that the authority to award costs is discretionary and exercised in exceptional circumstances.
- [61] In this case, I do not find the facts to be exceptional circumstances where a party ought to be award costs.
- [62] Further, despite the tenancy continuing, neither party would be considered "successful" based upon their respective applications and remedies sought. The Tenant Application was invalid because it was outside the statutory filing deadline and the Landlord Application was denied vacant possession because the reason in the Notice was not proven on a balance of probabilities.
- [63] For these reasons, I decline to award costs to the Tenant, despite the tenancy continuing.

IT IS THEREFORE ORDERED THAT

1. The Notice is invalid. The tenancy will continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 28th day of May, 2026.

(sgd.) Cody Burke

Cody Burke
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.