

INTRODUCTION

- [1] This decision addresses 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 Tenant and all occupants to vacate the Unit.

DISPOSITION

- [3] The Tenant and all occupants must vacate the Unit by the timeline below.

BACKGROUND

- [4] The Unit is an apartment in a multi-unit building (the "Residential Property").
- [5] The parties entered into a written fixed-term tenancy agreement for the Unit for the period of January 15, 2026, to January 15, 2027. Rent is \$849.00 per month, due on the first of the month. A security deposit of \$849.00 was paid at the start of the tenancy.
- [6] On April 6, 2026, before 5:00 p.m., the Landlord served the Tenant with a *Form 4(A) Eviction Notice*, effective May 31, 2026 (the "Notice"), for failing to comply with a material term of the tenancy agreement despite written warning. The Notice was served electronically.
- [7] On April 16, 2026, the Tenant emailed the Rental Office a *Form 2(A) Tenant Application to Determine Dispute* (the "Form 2(A)") seeking to dispute the Notice. The e-mail was sent to the Rental Office after its hours of operation. This means that the Form 2(A) was not filed with the Rental Office until April 17, 2026, in accordance with subsection 33(7) of the *Interpretation Act*.
- [8] The Form 2(A) was filed outside the ten-day period prescribed by subsection 61(5) of the Act, and not accepted.
- [9] On June 1, 2026, the Landlord filed a *Form 2(B) Landlord Application to Determine Dispute* (the "Application") seeking vacant possession of the Unit and rent owing. During the hearing, the rent owing claim was rescinded. The Application was served electronically.
- [10] On June 10, 2026, the Rental Office emailed the parties notice of a tele-hearing scheduled for July 7, 2026.
- [11] On June 11, 2026, the Rental Office emailed the parties a notice of a rescheduled tele-hearing for July 6, 2026.
- [12] On June 24, 2026, the Rental Office emailed the parties a 55-page PDF evidence package.
- [13] On July 6, 2026, the Landlord's representatives (the "Representatives"), the Landlord's witness, and the Tenant participated in the tele-hearing. The parties confirmed receipt of the evidence package and stated that all evidence submitted was included.

ISSUE

- A. **Must the Tenant and all occupants vacate the Unit?**

EVIDENCE

- [14] The Landlord's reason for terminating the tenancy in the Notice is under subsection 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.
- [15] The Representatives stated the Tenant has been smoking cannabis in the Unit, and on the Residential Property, which is a breach of the tenancy agreement. The Landlord is seeking termination of the tenancy but is no longer seeking rent owing. The Representatives stated that the Tenant did not file the Form 2(A) on time to dispute the Notice.
- [16] On February 13, 2026, one of the Representatives received a complaint from a tenant about the smell of cannabis smoke coming from the Unit. The Representative served the Tenant with an earlier notice of termination. The Tenant agreed not to smoke cannabis in the Unit again, and the Representative did not proceed with termination at that time.
- [17] On April 6, 2026, one of the Representatives received another complaint from a tenant about the smell of cannabis smoke coming from the Unit. The Representative served the Tenant with the Notice.
- [18] The Representatives stated they have not seen the Tenant smoking in the Unit or on the Residential Property. The Representatives have received complaints about the smell of cannabis smoke coming from the Unit, and about the Tenant smoking by the dumpster, which is still on the Residential Property.
- [19] One of the Representatives stated that she has been in the Landlord's witness's rental unit, which is next to the Unit. She stated that she has smelled cannabis smoke which she believed was coming from the Unit. The Representatives stated that they have not entered the Unit to see if the Tenant had been smoking, even after receiving complaints of the cannabis smell.
- [20] The Landlord's witness stated that he lives beside the Unit. He stated that he often smells cannabis smoke in his apartment, which he believes is coming from the Unit. The Landlord's witness stated he has observed the Tenant smoking by the dumpster on the Residential Property, but has not seen the Tenant smoking in the Unit.
- [21] The Tenant denied smoking cannabis in the Unit. He stated that he agreed only to stop smoking in the Unit after the February 13 complaint, so he would not be evicted. He stated that no one has seen him smoking in his Unit. The Tenant stated that when he learned the dumpster was still on the Residential Property, he moved further away to smoke.
- [22] The Tenant stated that he now smokes using a vape, and there is no detectable odour, so any cannabis smell cannot be attributed to him. The Tenant stated that others smoke in their Units but they are not being evicted. The Tenant stated that he has invited the Representatives into the Unit to smell for smoke, but the Representatives have refused to enter.

ANALYSIS & FINDINGS

- [23] I find that the Tenant did not file an application with the Rental Office disputing the Notice within the ten-day period required by subsection 61(5) of the Act.
- [24] The Notice was served electronically on April 6, 2026, before 5:00 p.m. The Tenant emailed the Rental Office the Form 2(A) on April 16, 2026, at 6:40 p.m., after the Rental Office's hours of operation. The Form 2(A) was deemed filed on April 17, 2026, which was the eleventh day, under subsection 33(7) of the *Interpretation Act*.
- [25] Therefore, I find that the Tenant is deemed to have accepted the Notice under clause 61(6) of the Act, which 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.

- [26] The evidence does not establish that the Notice was waived, the tenancy was reinstated, or a new tenancy was created under section 74 of the Act.
- [27] There were no defects in the Notice. The Notice states a valid ground for termination, and the required written warning was provided in an earlier notice of termination.
- [28] I find that the Notice is valid and the Application for delivery of possession is allowed.
- [29] Having found that the Tenant is deemed to have accepted the Notice, I make no finding as to whether the evidence supports termination of the tenancy.
- [30] 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 July 14, 2026**.
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 7th day of July, 2026.

(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.