

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 issued an eviction notice alleging that the Tenant was repeatedly late paying rent.
- [3] The Tenant filed an application with the Rental Office disputing the eviction. The Tenant argued that the Landlord did not serve the eviction notice in accordance with the *Act*.
- [4] The Landlord argued that the Tenant did not serve the application in accordance with the *Act*.

BACKGROUND

- [5] The Unit is a three-bedroom, two-bathroom rental unit that is part of a duplex building that the Landlord and the Landlord’s witness (“BC”) have owned for about ten years.
- [6] The Landlord and the Tenant entered into a written, fixed-term tenancy agreement from December 1, 2020 to November 30, 2021 that later converted to a monthly agreement (the “Tenancy Agreement”). A security deposit of \$1,750.00 was paid. The rent increased from \$1,862.37 to \$1,899.72 on January 1, 2026.
- [7] On June 30, 2026 the Landlord issued a *Form 4(A) Eviction Notice* with a vacate date of July 31, 2026 (the “Notice”) for repeatedly late rent payments.
- [8] On July 10, 2026 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the “Application”) with the Rental Office disputing the Notice.
- [9] The parties take issue with service of the Notice and the Application.
- [10] On July 21, 2026 the Rental Office sent the parties notice of a hearing scheduled for August 11, 2026.
- [11] On August 3, 2026 the Rental Office sent the parties a 56-page PDF evidence package.
- [12] On August 11, 2026 the Tenant, the Tenant’s support person, the Landlord and BC participated in a hearing. The parties confirmed that they received the evidence package and that they were not aware of anything missing that had been previously submitted to the Rental Office for this dispute.

DISPOSITION

- [13] I find that the Notice is invalid and the Application is allowed. The tenancy will continue and the Tenant may continue living in the Unit.

ISSUES

- A. Were the Notice and the Application served in accordance with section 100 of the *Act*?
- B. Must the Tenant and all occupants vacate the Unit because of the Notice?

ANALYSIS**A. Were the Notice and the Application served in accordance with section 100 of the Act?**

- [14] Section 100 of the Act provides the general rules for serving documents under the Act. In particular, subsection 100(1) states:

A document that is required or permitted under this Act to be given to or served on a person shall be given or served in one of the following ways:

- (a) giving the document personally to the other party;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) sending the document by registered mail or ordinary mail to the other party at an address provided by the other party;*
- (d) sending the document electronically where*
 - (i) it is provided in the same or substantially the same form as the printed document,*
 - (ii) the other party has provided an electronic address for receipt of documents, and*
 - (iii) it is sent to that electronic address;*
- (e) where the other party is a corporation, by giving a copy of the document personally to a director, manager or other officer of the corporation or by leaving it at, or sending it to, the registered office of the corporation by a method set out in clause (c) or (d);*
- (f) posting the document in a conspicuous place on the entrance of the rental unit;*
- (g) by any other means of service prescribed in the regulations.*

- [15] The evidence presented establishes that the Notice was not served in accordance with subsection 100(1) of the Act.

- [16] The Tenant testified that the Notice was:

"...handed to my daughter who was not old enough to drive yet, and yet it was in an open envelope clearly showing that her father was late in paying rent and she was going to be evicted from her home within a month."

- [17] With regard to service of the Notice, BC testified:

"His daughter came to the door. Said he was in the shower. So I gave her the paperwork. And I called [the Tenant] later to confirm that he got it."

- [18] The Tenant expressed that he was very unhappy that BC gave his minor daughter the Notice.

- [19] I note that BC should have foreseen that delivering an eviction notice to the Tenant's daughter would be a very upsetting incident for the Tenant and his family. BC should have waited until the Tenant was available or given the Notice directly to the Tenant in another manner.

- [20] Clause 100(1)(d) permits the electronic service of documents. In many Rental Office matters documents are served solely by email. It is unnecessary for the Landlord and the Tenant to serve one another with paper copies.

- [21] The parties' evidence establishes that the Tenant did in fact receive the Notice. I am satisfied that the Tenant became aware that the Landlord was seeking the end of the tenancy for non-payment of rent. Although the Tenant was not served under subsection 100(1), I find that the Tenant was served under 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.

- [22] The Landlord must ensure that no further documents from the Landlord under the *Residential Tenancy Act* are given to the Tenant's family members.
- [23] I turn now to service of the Application.
- [24] The Landlord stated that she did not receive the Application until the morning of July 16, 2026.
- [25] The Tenant's son posted the Application to the door of the Landlord's primary residence around 12:45 p.m. on July 15, 2026, the fifth day after the Application was filed.
- [26] Clause 100(1)(f) permits a document to be posted in a conspicuous place on the entrance of a rental unit. Essentially, this is a clause for landlords serving tenants because the term "*rental unit*" means the living accommodation that the tenant is renting from the landlord under subsection 1(o).
- [27] There is not a comparable clause permitting a tenant to post a document to a conspicuous place of the landlord's primary residence. The Application was not served in accordance with subsection 100(1).
- [28] However, similar to service of the Notice, I find that the Application was served to the Landlord under subsection 100(3) on July 15, 2026. This was the date that the Application was posted to the door.
- [29] Under the *Act*, there are special rules that deem a document is served on a later date. For instance, subsection 100(4) states that when a document is mailed it is deemed served on the third day after mailing. Subsection 100(5) stated that a document sent electronically after 5:00 p.m. is considered served the next that that is not a holiday.
- [30] There are no special rules under the *Act* stating that a document posted to a door is deemed to be served on a later date.
- [31] For these reasons, I find that the Application was served on July 15, 2026 when it was posted to the Landlord's door.
- [32] Most applications, including an application to dispute an eviction notice, must be served within five days of being filed with the Rental Office.
- [33] Subsection 76(2) of the *Act* states:
- 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.*
- [34] I find that the Landlord was served with the Application within five days in accordance with subsection 76(2).
- [35] The Tenant must ensure that future documents are served in accordance with subsection 100(1) of the *Act*.

B. Must the Tenant and all occupants vacate the Unit because of the Notice?**Legal Basis**

[36] 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.

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

(b) the tenant is repeatedly late in paying rent;

[38] In Order LR26-16¹ the Island Regulatory and Appeals Commission (the "Commission") made the following comments regarding a landlord ending a tenancy:

"49. 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.

50. 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."

[39] For the reasons below, I find that the Landlord cannot end the tenancy for repeatedly late rent payments under clause 61(1)(b) and the Notice is invalid.

Case Law

[40] The Landlord referred to a Commission decision where a tenancy was ended for repeatedly late rent payments.

[41] In particular, the Landlord quoted paragraph 17. of Order LR23-66², which states:

"The Commission notes that the Act provides that a Landlord may, under section 61(1)(b), evict a tenant who is repeatedly late paying rent. It is therefore in the Landlord's discretion whether to evict and so long as the Landlord proves that the Tenant was repeatedly late in paying rent, and that the Notice was served, then the eviction will stand. While a landlord may seemingly tolerate late payment for some time, the Act permits an eviction based on repeated late payment of rent and no warning is required."

[42] It is true that the Act does not state that a written warning must be given before an eviction notice is served for repeatedly late rent payments.

[43] This is different than ending a tenancy for breach of a material term under clause 61(1)(h), which specifically requires a written notice before an eviction notice can be validly served.

¹ <https://irac.pe.ca/wp-content/uploads/Order-LR26-16-.pdf>

² <https://irac.pe.ca/wp-content/uploads/Order-LR23-66.pdf>

[44] However, the Commission has also determined that the communications between a landlord and a tenant are relevant for determining whether an eviction notice can be enforced against a tenant for repeatedly late rent payments.

[45] In Order LR25-43³ the Commission determined another eviction dispute regarding repeatedly late rent payments. The Commission referred to section 5 of the *Act*, which states:

Except as specifically provided in this Act, a waiver or release by a tenant of the rights, benefits or protections under this Act is void and of no effect.

[46] The Commission interpreted section 5 as follows:

“While a waiver by a tenant of their rights under the Act is void under section 5 of the Act, a waiver by a landlord of their rights under the Act is not void under the Act.”

[47] The Commission reviewed the landlord’s text-message communications with the tenant and essentially found that the landlord had waived their right to end the tenancy for repeatedly late rent payments for most of the payments in issue.

[48] I note that the Rental Office is not bound by decisions from the superior courts of other provinces. However, I find the analysis in the British Columbia Supreme Court case *Guevara v Louie*⁴ is relevant and compelling for determining the dispute between the Landlord and the Tenant.

[49] I note the following important similarities between the *Act* and British Columbia’s *Residential Tenancy Act*⁵ (the “*BCRTA*”) for ending a tenancy for repeatedly late rent payments:

- Almost identical wording for ending a tenancy for repeatedly late rent payments (clause 61(1)(b) of the *Act* and clause 47(1)(b) of the *BCRTA*)
- The term “repeatedly late” is undefined
- Except as modified by the legislation, the common law respecting landlords and tenants applies (section 101 of the *Act* and section 91 of the *BCRTA*)

[50] In *Guevara v Louie* the Court determined a residential eviction dispute under the *BCRTA* between a landlord (Louie) and a tenant (Guevara). The Court made the following comments regarding repeatedly late rent payments, waiver and estoppel:

[54] *In my view, the Arbitrator failed completely to consider or apply the modern principle of statutory interpretation to his consideration of s. 47(1)(b) of the RTA and its application to the circumstances of Ms. Guevara. At a minimum, the Arbitrator was required to consider the context and purpose of s. 47 and adopt an interpretation consistent with those factors.*

[55] *Section 47 sets out a number of grounds on which a landlord may rely upon to terminate a tenancy. A review of all of the grounds on which a tenancy may be terminated under s. 47 makes it apparent that the tenant must have engaged in serious misconduct that seriously affected the landlord or the other tenants of the building in which the premises are located, failed to comply with a condition precedent to the rental agreement coming*

³ <https://irac.pe.ca/wp-content/uploads/Order-LR25-43.pdf>

⁴ *Guevara v Louie*, 2020 BCSC 380, available at:

<https://www.canlii.org/en/bc/bcsc/doc/2020/2020bcsc380/2020bcsc380.html>

⁵ *Residential Tenancy Act*, S.B.C. 2002, c.78, available at:

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02078_01

into effect (s. 47(1)(a)) or have taken an unreasonable amount of time to comply with a material term of the tenancy agreement.

[56] In addition, the Arbitrator appeared to give no consideration to the circumstances relating to the defaults he found to have occurred. Beyond noting that three late payments of rent were the minimum number to engage s. 47(1)(b), he did not address the frequency of the defaults in the context of the length of the tenancy, the length of the default, or the expectations of the parties. He did not give full consideration to the content of the communications between the parties in respect of any of the defaults—such as Ms. Louie indicating that she was okay with receiving late rental payments on several occasions and several discussions of banking errors arising from the e-transfer format—aside from concluding that Ms. Louie was forced to follow up with Ms. Guevara when rent was not paid on time. In my view, that approach fell so far short of the required standard of statutory interpretation as to render the decision patently unreasonable.

[57] My view in this regard is reinforced by the fact that Ms. Guevara was in default, even on the Arbitrator's view of the facts, for a total of 10 days in the year leading up to the notice of termination being given. Section 46 of the RTA provides that a landlord may not give notice of termination for non payment of rent on the due date until 10 days have elapsed after that date. Under s. 46(2) the tenant would then have five days to pay the rent, resulting in the notice being of no effect. These permissive timelines should inform the interpretation of what circumstances constitute "repeatedly late" rental payments, giving rise to a right to terminate a tenancy under s. 47(1)(b) of the RTA.

...

[62] Another fundamental problem with the Arbitrator's reasons is his failure to understand the vital distinction between waiver and estoppel in his analysis of the parties' rights and obligations. This resulted in the Arbitrator taking an unreasonably narrow view of all of the circumstances relevant to the decision he had to make. The Arbitrator decided that Ms. Louie had not "waived" her right to receive the rent on the first of the month as a term of the tenancy agreement. However, the real issue before him was whether Ms. Louie was estopped from enforcing a provision of the tenancy agreement by her past conduct. That issue required a determination of whether Ms. Louie's conduct led Ms. Guevara to conclude that e-transferring the rent within a day or two after the first of the month was acceptable to her. Therefore, the proper question was whether Ms. Louie could rely on past instances of rent not being paid on the first of the month to terminate the tenancy agreement when for years she had acquiesced in the manner that rent was paid. Specifically, had Ms. Louie represented through her conduct and communications that she did not require strict compliance with the term of the tenancy agreement stating that rent must be paid on the first day of the month.

[63] While the legal test of waiver requires a "clear intention" to "forgo" the exercise of a contractual right, the equitable principle of estoppel applies where a person with a formal right "represents that those rights will be compromised or varied." *Tymchuk v. D.L.B. Properties*, 2000 SKQB 155 at paras. 11-17. Unlike waiver, the principle of estoppel does not require a reliance on unequivocal conduct, but rather "whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely upon it." *Bowen v. O'Brien Financial Corp.*, 1991 CanLII 826 (BC CA), [1991] B.C.J. No. 3690 (C.A.). Thus, the relevant legal concept before the Arbitrator was not waiver of a contractual right, but rather whether Ms. Louie's prior conduct estopped her from relying on past rental payments made a day or two after the first of each month to

evict Ms. Guevara on the grounds of “repeatedly late” payment under s. 47(1)(b) of the RTA.

[64] In this case, on the record that was before the Arbitrator, there had been a period of years in which Ms. Louie had acquiesced to an occasional payment being made shortly after the first of the month. Earlier in these reasons I reviewed some of that history. I note that in May 2019, Ms. Louie gave Ms. Guevara notice of an increase in rent— clearly suggesting a continuation of the parties’ landlord-tenancy relationship. In my view, no reasonable person in Ms. Guevara’s position would have concluded that Ms. Louie was contemplating terminating the lease for late payment until she physically received the notice to terminate.

”

[67] The distinction between waiver and estoppel is vital in this case because Ms. Louie relies on alleged defaults that occurred before she gave any indication that she required strict compliance with the requirement to pay rent on the first of the month. It is not until email reminders dated May 2 and June 3, 2019, that Ms. Louie states that she would require “all future payments” to be made on the 1st of the month. Such a notice would have had to be clear. As reviewed, previous correspondence regarding rental payments made after the 1st of the month involved language to the effect of ‘please transfer rent at your earliest convenience’ and ‘do you know when I can get the rent?’ (December 2018 correspondence). In light of Ms. Louie’s history of acquiescence, I find that Ms. Louie could not rely on instances where Ms. Guevara paid rent after the 1st of the month, where these payments occurred prior to Ms. Louie’s notice that she would require Ms. Guevara’s strict compliance with the tenancy agreement’s rental payment due date. I find Ms. Louie was required to give Ms. Guevara reasonable notice that strict compliance would be enforced, before taking steps to terminate the residency for late payment. Such notice was not provided.

[68] Estoppel has been a fundamental principle of the law for a long time: see *Hughes v. Metropolitan Railway Co.* (1877), 2 App. Cas. 439. However, the Arbitrator failed to address this fundamental principle in his reasons. By so doing he deprived Ms. Guevara of the right to show that in the circumstances of the application before him it would have been unjust to permit Ms. Louie to terminate the tenancy agreement given the long course of conduct in which she acquiesced.

[51] Section 101 of the Act is also very similar to section 10 of Saskatchewan’s *The Residential Tenancies Act, 2006*⁶, which states:

Except as modified or varied by this Act or the regulations, the common law applies to tenancy agreements.

⁶ *The Residential Tenancies Act, 2006*⁶, SS 2006, c R-22.0001, available at: <https://publications.saskatchewan.ca/api/v1/products/23011/formats/29464/download>

[52] In the Saskatchewan case *Cheon v. Altern Properties Inc.*⁷, the following is stated at paragraph [18]:

“...It is beyond question that the common law (including equitable estoppel) applies to tenancy agreements unless otherwise modified by the Act. (s. 10 of the Act; Smith v Elite Property Management Ltd., 2012 SKQB 12, 389 Sask R 63).”

Payment History

[53] The Landlord’s documentary evidence stated that the Tenant was late paying rent seven of the last twelve months, for a total of ten days.

[54] The bank records show the following payments:

- July 2, 2025 - \$1,862.37
- September 2, 2025 - \$1,862.37
- November 3, 2025 - \$1,862.37
- January 2, 2026 - \$1,899.72
- February 2, 2026 - \$1,899.72
- March 2, 2026 - \$1,899.72
- May 4, 2026 - \$1,899.72

[55] However, in the Landlord’s bank documents any payment on a Saturday, Sunday or federal holiday is dated the next business day that the bank is open.

[56] The Tenant’s e-Transfer emails show the following payments:

- August 1, 2025 - \$1,862.37
- September 2, 2025 - \$1,862.37
- October 1, 2025 - \$1,862.37
- November 1, 2025 - \$1,862.37
- December 1, 2025 - \$1,862.37
- January 2, 2026 - \$1,899.72
- February 2, 2026 - \$1,899.72
- March 2, 2026 - \$1,899.72
- April 1, 2026 - \$1,899.72
- May 2, 2026 - \$1,899.72
- June 1, 2026 - \$1,899.72
- June 30, 2026 - \$1,899.72

[57] The parties agree that August rent was paid in full on August 1, 2026.

[58] I find that the e-Transfer emails provide more accurate evidence of the date the rent payments were sent. At the hearing the Landlord stated that she was able to use the funds shortly after they were sent and she did not need to wait until the next business day that her bank was open.

[59] From August 1, 2025 to August 1, 2026 the Tenant was one day late paying rent on five occasions over these thirteen months, for a total of five days.

⁷ *Cheon v. Altern Properties Inc.*, 2015 SKQB 23, available at:
<https://www.canlii.org/en/sk/skqb/doc/2015/2015skqb23/2015skqb23.html>

- [60] Four of these occasions occurred on two statutory holidays, being Labour Day (September 1, 2025) and New Year's Day (January 1, 2026), and two occurred on a Sunday (February 1, 2026 and March 1, 2026).

Determination

- [61] Based upon the evidence presented, I am not satisfied that the Tenant was repeatedly late paying rent to the Landlord within the meaning of clause 61(1)(b).
- [62] I have reviewed the parties' evidence regarding the factual context in which the Notice was served.
- [63] The Tenant submitted text-message communications with the Landlord from July 2, 2025 to July 3, 2026. In this correspondence the Landlord did not make a single complaint about late rent payments before the Notice was served.
- [64] The Landlord testified that she text-messaged the Tenant on October 3, 2022 reminding him that the rent was due. The Landlord testified that she also telephoned the Tenant regarding the late payment of rent but this call was probably not within the last year.
- [65] I also note that the parties did not submit into evidence any past eviction notices served for non-payment of rent.
- [66] I find that there were no recent complaints from the Landlord to the Tenant regarding late rent payments. The recent communications between the parties would not have alerted the Tenant that paying rent a day late was problematic before the Notice was served.
- [67] Instead, the correspondence submitted shows conflicts between the parties unrelated to late rent payments.
- [68] The Tenant had complained to the Landlord regarding pests and the Unit's condition, particularly the functioning of the Unit's fridge. The correspondence shows that these complaints caused the Landlord a degree of frustration.
- [69] On June 28, 2026, two days before the Notice was served, the Landlord sent the Tenant the following text-message regarding the fridge:
- "No groceries should have had any issues with a fridge that is working perfectly. You just like to complain and have us spend money- so I think the fact that they ran quite a few tests and everything came back great should justify you paying the bill. You can e transfer me the \$194 asap."*
- [70] The legislative context of late rent payment evictions does not support the Notice.
- [71] The Act provides tenants with security of tenure under Part 4 of the Act. This means that a landlord cannot force a tenant to move out of a rental unit unless the landlord has a lawful basis to do so. Eviction proceedings occur in this context.
- [72] Evictions for repeatedly late rent payments also occur in the legislative context of being one of twelve grounds for ending a tenancy for cause under subsection 61(1). This subsection includes grounds for termination relating to serious incidents and behaviour such as significantly interfering others, putting property at significant risk, illegal activity, undue damage and knowingly giving false information about a residential property.

- [73] The Tenant's five days of late rent payments over thirteen months must be viewed in the context of other payment timelines.
- [74] In particular, clause 61(1)(a) of the *Act* does not permit a landlord to end a tenancy for non-payment of a security deposit until ten days have passed from the date that the security deposit was required to be paid.
- [75] A landlord can serve an eviction notice for non-payment of rent under subsection 60(1) if rent is not paid on the day it is due. However, clause 60(4)(a) permits a tenant to void a non-payment of rent eviction notice if the tenant pays the rent due within ten days of being served with the eviction notice.
- [76] These permissive payment timelines do not support ending the tenancy for five days of late rent payments over thirteen months.
- [77] I also consider the duration of the late payments. In this case the Tenant was never more than one day late in any month during the last thirteen months.
- [78] The impact of the four days where the first day of the month was a holiday is also relevant. Many common landlord payments, such as mortgage payments, are typically deferred to the next day that is not a holiday.
- [79] In this context, I am not satisfied that the Tenant being late five days over thirteen months, with four of these late payments being made immediately after statutory holidays, amounts to repeatedly late rent payments under clause 61(1)(b).
- [80] As a result, I find that the Notice is invalid and the Application is allowed. The tenancy will continue and the Tenant may continue living in the Unit.
- [81] **However, I note that the Landlord has made it clear that she expects rent payments to be made by the first day of the month.**
- [82] **The Tenant makes any further late rent payments at his own peril.**
- [83] It is unnecessary for me to also determine whether the Landlord is estopped from ending the tenancy for repeatedly late rent payments due to the determination above that the Notice is invalid.

CONCLUSION

- [84] The parties must ensure that any future documents are served in accordance with subsection 100(1) of the *Act*.
- [85] The Notice is invalid and the Application is allowed. The tenancy will continue and the Tenant may continue living in the Unit.

IT IS THEREFORE ORDERED THAT

1. The tenancy will continue and the Tenant may continue living in the Unit.

DATED at Charlottetown, Prince Edward Island, this 18th day of August, 2026.

(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.