PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: **November 21, 2025**
Dockets: **LR25049**
Type: **Rental Appeal**

INDEXED AS: Karl Ford v. Wendy Gallant

2025 PEIRAC 60 (CanLII)

Order No: LR25-54

BETWEEN:

Karl Ford (the "Landlord")

Appellant

AND:

Wendy Gallant (the "Tenant")

Respondent

ORDER

Panel Members:

Gordon MacFarlane, Commissioner
Kerri Carpenter, Vice Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on September 23, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the tenancy agreement will continue and the Tenant can continue to live in the Rental Unit.

B. BACKGROUND

2. This appeal concerns a rental unit located at Unit 3 – 651 Crooked Creek Road, Oyster Bed Bridge, PEI (the "Rental Unit"). The Rental Unit is an apartment in a multi-unit building ("Residential Property").

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

4. 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 Rental Unit ("Eviction Notice").

5. 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 Rental Unit and for the Sheriff to put the Landlord in possession.

6. On August 6, 2025, the Rental Office emailed the parties notice of a teleconference hearing scheduled for August 21, 2025. On August 12, 2025, the Rental Office sent the parties a 15-page PDF evidence package.

7. On August 21, 2025, the Landlord's representative ("Representative") participated in a teleconference hearing before the Rental Office. The Rental Office attempted to reach the Tenant but was not successful. The hearing proceeded in the Tenant's absence.

8. 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.

9. On August 28, 2025, the Rental office issued Order LD25-321, which ordered that the tenancy agreement will continue and the Tenant can continue to live in the Rental Unit.

10. The Landlord appealed Order LD25-331 on September 8, 2025.

11. The Commission heard the appeal on September 23, 2025, by way of telephone conference. Katie Doucette and Daniel Doucette (the "Doucettes") attended on behalf of the Landlord, Karl Ford. The Tenant, Wendy Gallant, attended on her own behalf. Paul King ("King") attended as a witness for the Landlord.

C. DISPOSITION

12. The appeal is allowed. Order LD25-321 is reversed as a result of new evidence presented on appeal. The tenancy is terminated effective December 8, 2025 at 5:00 p.m.

D. ISSUES

13. The issue the Commission must consider in this appeal is whether the tenancy should be terminated in accordance with clauses 61(1)(d) and 61(1)(h) of the *Residential Tenancy Act*.

E. SUMMARY OF EVIDENCE

14. The Doucettes testified that they manage the Residential Property. They have received complaints about smoking occurring in the Rental Unit. The Doucettes testified that they could smell cigarette smoke when they were renovating the apartment now occupied by King. They sent a letter by text message to the Tenant and the Tenant replied "OK sorry". The Doucettes stated that the Tenant is often absent but allows other people to stay at the Rental Unit. The Doucettes believe that the Tenant's guests are smoking in the Rental Unit.

15. King testified that in April 2025 he moved into an apartment in the same building as the Rental Unit. He testified that he immediately noticed the smell of cigarette smoke. In his words: "My apartment smells like an ashtray". He testified that he has witnessed the Tenant and her guests walk in to the building with lit cigarettes. He has seen them smoking through the window when the drapes were open. King stated that the cigarette smell has affected his health and well being. He experiences headaches and nausea. He testified that he smells cigarette smoke in his bedroom, bathroom and kitchen. He further testified that his clothes, bedding and towels smell of cigarette smoke.

16. The Tenant testified that she has been a Tenant of the Landlord for over 13 years and has lived in the Rental Unit since 2019. She stated that she had no previous complaints against her. She testified that she does burn incense in the Rental Unit. She does not smoke in the Rental Unit as her daughter lives with her. She stated that she does not smoke in the Rental Unit for the health and well being of her daughter. The Tenant acknowledged that people have smoked in the Rental Unit when she and her daughter were away. The tenant stated that she told the Doucettes that this would not happen again. The Tenant testified that she believes King is mistaken as she smokes outside at least 15 feet from the building.

F. ANALYSIS

Preliminary Issue

17. As a preliminary issue, the Commission notes that this matter came before the Rental Office, and eventually the Commission on appeal, via the Landlord's Application seeking vacant possession. On the Commission's review of the evidence before us, there does not appear to be an application from the Tenant disputing the Eviction Notice, as contemplated by subsection 61(5) of the *Residential Tenancy Act*. That subsection states:

Tenant may dispute notice

(5) 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.

18. Subsection 61(6) goes on to state:

Tenant presumed to accept notice

(6) 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.

19. The Rental Office and the Commission have, in the past, considered the merits of an eviction on a landlord's application for possession where a tenant challenges the validity of an eviction (see, for example, Commission Orders LR23-79 and LR24-28). Both of those decisions are distinguishable from the present case because they refer to a former version of the approved Form 4(A) Eviction Notice and, in both cases, the tenants participated in the Rental Office hearing.

20. In the present case, the applicability of subsections 61(5) and 61(6) were not considered in LD35-321, nor was the issue addressed by the parties at the appeal hearing before the Commission. However, in the absence of an application from the Tenant disputing the Eviction Notice that was otherwise effective (per section 53), the *Act* deems the Tenant to have accepted the termination of the tenancy.

21. For these reasons, the Commission finds that the Landlord's Application seeking vacant possession of the Rental Unit should succeed. However, as this issue was not addressed by the parties at the appeal hearing, the Commission will go on to consider the merits of the appeal.

Landlord's Notice for Cause

22. Clauses 61(1)(d) and (h) of the *Act* read:

61. Landlord's notice for cause

(1) 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 put the landlord's property at significant risk, 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.

23. Where a landlord seeks to evict a tenant, the landlord bears the onus to prove, on the civil standard of a balance of probabilities, that there is a valid reason referenced in the *Act* and set out in the Notice to terminate the tenancy.

24. In Order LD25-321 the Residential Tenancy Officer stated at paragraph 27:

> *[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.*

25. At the appeal, the Landlord's witness King testified (under affirmation) and responded to questions. The Commission finds King to be a credible witness.

26. Exhibit E-10 is a May 13, 2025, written notice to the Tenant from the Doucettes. This notice identifies a breach of the rental agreement (smoking within the Rental Unit) and states the breach must be corrected or a notice of termination will be given.

27. Exhibit R-1 is an email from a neighbour of the Tenant who lives in a nearby building. The neighbour states that he has often seen the Tenant smoking outside but never saw her smoking inside the Rental Unit.

28. The Commission finds that the Tenant permitted others to smoke in the Rental Unit when she and her daughter were away. A tenant is responsible for the actions of their guests whether they are with them or not. While the Commission accepts that the Tenant does smoke outdoors at times, perhaps even most of the time, the Commission notes the testimony of King observing the Tenant with others entering the building with lit cigarettes as well as the testimony of King seeing the Tenant and others, through a window, smoking in the Rental Unit. The Commission accepts King's evidence and finds that the Tenant did, at least on occasion, smoke inside the Rental Unit.

29. Exhibit E-8 is a standard form rental agreement dated September 23, 2019, between the Tenant and the Landlord. On the third page of this agreement it states under *Schedule "D" Additional Terms or Conditions – Section IV of Rental Agreement:*

> *No smoking in building.*

30. The Commission finds that the Landlord has now provided sufficient evidence to meet the onus of proof and support the termination of the tenancy based on clauses 61(1)(d)(i) [significantly interfered with or unreasonably disturbed another occupant] and 61(1)(h) [failed to comply with a material term of the tenancy agreement]. Accordingly, the tenancy agreement shall be terminated, effective November 30, 2025 at 5:00 p.m.

G. CONCLUSION

31. The appeal is allowed. The Tenant did not dispute the Eviction Notice as required by subsection 61(5) of the *Act.* In any event, new evidence presented on appeal supports the reversal of Order LD25-321. The tenancy is terminated effective December 8, 2025 at 5:00 p.m.

IT IS ORDERED THAT

1. **The appeal is allowed.**

2. **Order LD25-321 is reversed.**

3. **The tenancy between the parties will terminate on December 8, 2025 at 5:00 p.m. The Tenant and all occupants must vacate the Rental Unit by this date and time.**

4. **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, 21st day of November, 2025.

BY THE COMMISSION:

[sgd. Gordon MacFarlane]
Gordon MacFarlane, Commissioner

[sgd. Kerri Carpenter]
Kerri Carpenter, Vice-Chair

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.