

## **Residential Tenancies Tribunal**

Application 2024-0826-NL

Oksana Tkachuk  
Adjudicator

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### **Introduction**

1. Hearing was called at 9:02 a.m. on 15-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, called in to the teleconference, however was unwilling to proceed and discontinued the call.

### **Preliminary Matters**

4. The landlord was not present or represented at the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as she has been properly served. The tenant submitted affidavit with her application stating that she had served the respondent with the notice of hearing via prepaid registered mail tracking number [REDACTED] and via email; [REDACTED] on 20-September-2024 (TT#1). The tenant submitted a copy of receipt that mail and email were sent on that date (TT#2). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, the hearing proceeded in her absence.
5. There was an oral/implied agreement between the landlord and the tenant which was later written and signed by both parties as a month-to-month rental agreement (TT#3). The tenancy commenced on 6-September-2023 and rent was \$1100.00 per month, due on the first of each month. The tenant vacated on 30-April-2024 and a security deposit was not collected.
6. The tenant amended the application to include hearing expenses of \$34.48.

## Issues before the Tribunal

7. The tenant is seeking:

- Refund of rent \$700.00;
- Hearing expenses \$34.48.

## Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

9. Also, relevant and considered in this decision is the following sections of the *Residential Tenancies Act, 2018*: Section 16: Rental Increase and following sections of the *Residential Tenancies Policy Manual*: Section 12-1: Costs and Section 13-1: Rental Increase.

### Issue #1: Refund of rent \$700.00.

#### Tenant's Position

10. The tenant testified that the landlord requested \$100.00 increase in rent by the end of September-2023. To support her claim, the tenant submitted a copy of the message (TT#4). The tenant stated that she paid an additional \$100.00 in rent from October-2023 to April-2024 and is seeking a \$700.00 refund. The tenant submitted a copy of her e-transfer history to demonstrate that she paid \$1200.00 for each of the months in question (TT#5). Additionally, the tenant stated that in April-2024, she received another notice from the landlord regarding a further \$100.00 increase, which led her to vacate the property at the end of April. The tenant also submitted a copy of this message (TT#6). The tenant is seeking \$700.00 refund of rent.

#### Analysis

11. Section 16 of the Act states:

#### Rental increase

**16.** (1) Notwithstanding another Act, agreement, declaration, waiver or statement to the contrary, a landlord shall not increase the amount of rent payable by a tenant,

- (a) where the residential premises is rented from week to week or month to month, more than once in a 12-month period;
- (b) where the residential premises is rented for a fixed term, during the term of the rental agreement; or
- (c) where a tenant continues to use or occupy the residential premises after a fixed term has expired, more than once in a 12-month period.

(2) Notwithstanding subsection (1), a landlord shall not increase the amount of rent payable by a tenant during the 12-month period immediately following the commencement of the rental agreement.

(3) Where a landlord increases the amount of rent payable by a tenant, the increase shall be effective on the first day of a rental period, and the landlord shall give the tenant written notice of the increase

- (a) not less than 8 weeks before the effective date of the increase where the residential premises is rented from week to week; and
- (b) not less than 6 months before the effective date of the increase where the residential premises is rented from month to month or for a fixed term.

(4) In addition to the requirements under section 34, a notice under subsection (3) shall

- (a) be signed by the landlord;
- (b) state the effective date of the increase;
- (c) state the amount of the increase;
- (d) state the amount of rent payable when the increase becomes effective; and
- (e) be served in accordance with section 35.

12. I accept the tenant's testimony as the landlord was neither present nor represented during the hearing to provide testimony to support her case. The tenant demonstrated that the landlord requested a rent increase during the first month of the rental period and was able to show that she paid the increased rent of \$1200.00 for 7 months from October-2023 until April-2024. According to the Section 13-1 of the *Residential Tenancies Policy*, a landlord shall not increase rent during the first 12 months of a rental agreement, where residential premises are rented from month to month. After reviewing the evidence, I find that the landlord failed to provide proper notice of the rent increase, and as such, the rent increase was invalid. Therefore, I find that the landlord is required to refund \$700.00 of rent to the tenant.

**Decision:**

13. The tenant's claim for refund of rent succeeds in the amount of \$700.00.

**Issue #2: Hearing expenses \$34.48.**

Relevant Submission

14. The tenant paid \$20.00 for the application fee and \$14.48 for registered mail and is seeking reimbursement. The tenant submitted a copy of the receipts to support the claim (TT#7).

**Analysis**

15. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual: Costs*, and as the tenant's claim was successful, the tenant will be awarded \$34.48 to cover hearing expenses.

**Decision**

16. The tenant's claim for hearing expenses succeeds in the amount of \$34.48.

## Summary of Decision

17. The landlord shall pay to the tenant \$734.48 as follows:

Refund of rent .....	\$700.00
Hearing expenses.....	<b>\$34.48</b>
Total .....	\$734.48

October 16 2024

Date

Oksana Tkachuk, Adjudicator  
Residential Tenancies Office

