

## Residential Tenancies Tribunal

Application 2024-1051-NL

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 1:47 p.m. on 7-January-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
4. Witness for the landlord, [REDACTED], was called into the hearing.

### Preliminary Matters

5. The tenant submitted an affidavit with her application stating that she had served the landlord with the notice of hearing electronically by email to; [REDACTED] on 16-December-2024 (TT#1). The landlord confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act, 2018*, this is good service.
6. There was a written fixed term rental agreement that commenced on 1-October-2020 with the previous landlord. The property was sold on 1-September-2023 and a new fixed term rental agreement was signed on 1-December-2023 with the new landlord. The tenant vacated the unit on 28-October-2024. Rent was \$1275.00 per month, due on the first day of each month. A security deposit of \$450.00 was paid on 22-June-2020 and was returned in full to the tenant at the end of the tenancy.

### Issues before the Tribunal

7. The tenant is seeking:
  - Refund of rent \$3575.00.

### 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*. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 16: Rental Increase. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy*: Section 13-1: Rental Increase.

**Item # 1: Refund of rent \$3575.00**Relevant Submission

9. The tenant testified that she overpaid rent in the amount of \$325.00 per month for the period of December 2023 to October 2024. The tenant testified that her landlord illegally increased her rent from \$950.00 per month to \$1275.00 and she is seeking a refund of rent in the amount of \$3575.00 (\$325.00 x 11 months) and she submitted a copy of a rental ledger to support the claim (TT#2). See breakdown of rental ledger below:

Dec. 1/23	December Rent	\$1275.00	\$1275.00	—
Jan 1/24	January "	\$ 1275.00	\$1275.00	—
Feb 1/24	February "	\$ 1275.00	\$1275.00	—
Mar 1/24	March "	\$ 1275.00	\$1275.00	—
Apr 1/24	April "	\$ 1275.00	\$1275.00	—
May 1/24	May "	\$ 1275.00	\$1275.00	—
June 1/24	June "	\$ 1275.00	\$1275.00	—
July 1/24	July "	\$ 1275.00	\$1275.00	—
Aug 1/24	August "	\$ 1275.00	\$1275.00	—
Sept 1/24	September "	\$ 1275.00	\$1275.00	—
Oct 1/24	October "	\$ 1275.00	\$1275.00	—

Tenants' Position

10. The tenant testified that when the new homeowner initially viewed the property to purchase and when she took possession of the property on 1-September-2023, she made it clear both times that she would be increasing the rent as she felt that rent was below fair market value. The tenant stated that she wanted to remain in her unit and agreed that a rent increase would be reasonable, however she stated that she was never made aware of the amount of the rental increase, and she stated that she was shocked when the landlord sent her a copy of a new lease agreement to sign on 30-November-2023 with a monthly rental increase of \$325.00 effective immediately, on 1-December-2023 (TT#3). The tenant stated that she signed the new rental agreement as it would have been difficult for her to find a new place to rent at that time and she also stated that she was unaware that the landlord had an obligation to give a 6-month rental increase notice in writing. The tenant stated that she was not aware of her rights either as a tenant and she also testified that she had a rent increase of \$50.00 per month issued by the previous landlord effective 1-January- 2023.

Landlord's Position

11. The landlord did not dispute that she gave a rental increase without the proper 6-month notice, however she stated that the circumstances were unique in the following way: The landlord testified that based on her income she could only get approved for a mortgage to purchase the property if the rental income from the basement apartment was at a certain threshold and she stated that the rent payable from the current tenant was below that threshold. The landlord testified that she was

clear in her offer to purchase the property that the current owner shall give a standard termination notice to the tenant to vacate the unit prior to the closing date, which she stated occurred as per the *purchase and sale agreement*. The landlord stated that this would allow her to purchase the property and secure a new tenant who was willing to pay fair market value for the unit, allowing her to afford her mortgage.

12. The landlord testified that when viewing the unit with her real estate agent on a couple of occasions prior to the closing date, the tenant pleaded with her to allow her to remain within the unit as this was her home and she did not want to leave her home. The landlord testified that the tenant approached her stating that she would be willing to accept a rent increase if she were permitted to remain in the unit after the sale of the property. The landlord testified that she agreed that the tenant could remain in the unit if they entered into a new rental agreement with a new monthly rental amount. The landlord stated that she showed compassion towards the tenant and discussed the \$325.00 rental increase with the tenant over the telephone on 7-September and she stated that there were never any concerns / objections to the rental increase by the tenant until the end of the tenancy in October 2024.
13. The landlord called her real estate agent into the hearing as a witness to corroborate her testimony that she had full intentions of finding a new tenant who would be willing to pay rent at fair market value and to confirm that the tenant was the one who approached her pleading to remain within the unit and acknowledging that a rent increase would be fair and acceptable by her. The witness testified that he was present when the tenant pleaded with the landlord to allow her to stay in the unit and he acknowledged that the tenant expressed that she would sign a new rental agreement and accept a rental increase. The landlord stated that the new lease agreement was a mutually agreed upon resolution, which was offered as an act of goodwill and compromise, ensuring that she could make her mortgage payment and ensuring that the tenant could remain in her home.

## Analysis

14. Subsection 16(1) and (3) of the *Residential Tenancies Act, 2018* states:

### Rent 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,*

*(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.*

*16(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 ....*

*(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.*

15. Section 13-1 of the *Residential Tenancies Policy* states:

*Where a landlord and tenant discontinues a rental agreement and enters into a new*

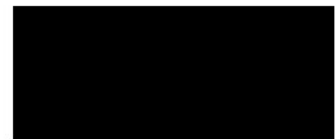
*agreement for the same rental unit with the same tenant(s), this tenancy is considered a continuous tenancy and will be treated as such.*

16. I accept the landlord's testimony and the testimony of her witness which shows that the tenant wished to stay in the unit after receiving a standard termination notice and agreed to pay an increase in rent to do so. I accept that the landlord included a clause in the *purchase and sale agreement* to legally evict the tenant so as to find a more suitable tenant where she could set the rent at fair market value. I accept that the tenant approached the landlord on more than one occasion asking to stay within the unit and agreeing to accept the landlord's conditions to sign a new contract and pay a higher rate of rent.
17. With all that said, the *Residential Tenancies Act, 2018* is clear when dealing with rental increases and in accordance with Section 16 of the *Act* as stated above, the landlord shall give the tenant written notice of the increase not less than 6 months before the effective date of the increase and rent shall not be increased more than once in a 12-month period. The tenant testified that her previous landlord had increased the rent effective 1-January-2023 which means that a new increase could not have come into effect until 1-January-2024 with a 6-month notice leading up to that date. Also, in accordance with Section 13-1 of the *Policy* as stated above, the tenant never left the unit when she was given the standard termination notice and as such the tenancy is considered a continuous tenancy. The assignment of a new landlord does not change the conditions of the rental agreement, nor does it give the new landlord the right to contravene the *Act* whatever the circumstances may be.
18. I find that the written notice to increase the rent was evident in the new rental agreement signed on 1-December-2023 and the increase in rent should have come into effect 6 months after that date, effective on 1-June-2024. I find that the tenant overpaid rent in the amount of \$325.00 for the period of 1-December-2023 to 31-May-2024 in the amount of \$1950.00 (6 mths x \$325).

#### Decision

19. The tenant's claim for a *refund of rent* succeeds in the amount of \$1950.00.
20. The landlord shall pay the tenant a refund of rent in the amount of \$1950.00.

January 15, 2025  
Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office