

## Residential Tenancies Tribunal

Application 2024-1170-NL

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 9:17 a.m. on 3-February-2025.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference. The applicant, [REDACTED], hereinafter referred to as "the tenant" did not attend.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord" did not attend.

### Preliminary Matters

4. The landlord was not present or represented at the hearing and I was unable to reach him by telephone at the start of 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 he has been properly served. The tenants submitted an affidavit with their application stating that they had served the landlord with the notice of hearing electronically by email to: [REDACTED] on 19-December-2024 (TT#1). The tenants submitted proof of sent email and proof of email address (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 tenants, I proceeded with the hearing in his absence.
5. There was initially a written term rental agreement that commenced on 1-December-2020. A renewal term agreement was entered into effective 1-July-2023 for 12 months. The tenants vacated the unit on 20-December-2023. Rent was initially \$1400.00 and was increased to \$1600.00 per month, due on the first day of each month. A security deposit of \$1050.00 was paid on 13-November-2020 and \$900.00 was returned to the tenants at the end of the tenancy.

### Issues before the Tribunal

6. The tenants are seeking:
  - Refund of rent \$1513.00

- Refund of security deposit \$150.00
- Hearing expenses \$20.00

## Legislation and Policy

7. 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 are the following sections of the *Residential Tenancies Policy Manual*: Section 12-1: Recovery of costs and Section 13-1: Rental increase.

### Item # 1: Refund of rent \$1513.00

#### Relevant Submission

8. The tenants are seeking a refund of rent in the amount of \$1513.00 for rent payments that were paid due to illegal rent increases from 1-November-2022 to 28-February-2023 and again from 1-July-2023 to 31-December-2023. The tenants are also seeking a refund of rent for the period of December 23-31, 2023 after they vacated the unit. See breakdown of sequence of events that occurred with regards to the payment of rent below:

Date	Action	Amount	Total
December 1, 2020	Tenancy began -Rent \$1400.00		
August 26, 2022	notice of rent increase of \$100.00 effective Nov 1, 2022		
November 1, 2022	rent increase payment	\$100.00	\$100.00
December 1, 2022	rent increase payment	\$100.00	\$200.00
January 1, 2023	rent increase payment	\$100.00	\$300.00
February 1, 2023	rent increase payment	\$100.00	\$400.00
February 15, 2023	notice of rent increase of \$100.00 effective July 1, 2023		\$0.00
July 1, 2023	rent increase payment	\$100.00	\$500.00
August 1, 2023	rent increase payment	\$100.00	\$600.00
September 1, 2023	rent increase payment	\$100.00	\$700.00
October 1, 2023	rent increase payment	\$100.00	\$800.00
November 1, 2023	rent increase payment	\$100.00	\$900.00
December 1, 2023	rent increase payment	\$100.00	\$1,000.00
December 23-31	pro-rated rent (9 days)	\$513.00	\$1,513.00

#### Tenant's Position

9. The tenant testified that the landlord informed them on 26-August-2022 that the rent will increase by \$100.00 effective 1-November-2022. The tenant stated that this was an illegal rent increase which should not have occurred until 6 months after the notice was given (March 2023) and the tenant stated that they paid the rental increase out of fear of retaliatory actions by the landlord. The tenant stated that they are seeking a refund of \$400.00 for the period of 1-November-2022 to 28-February-2023.

10. The tenant testified that on 15-February-2023 they were approached once again by the landlord advising them that he planned to increase the rent again in the amount of \$100.00. The tenant stated that he and his other roommate pushed back this time and advised the landlord of the rules surrounding rental increases. The tenant stated that they entered into a renewal rental agreement with the landlord to pay the new rental increase

of \$100.00 effective 1-July-2023 and the tenant stated that they agreed to do this to protect themselves from any other illegal rental increases. The tenant stated that they are seeking a refund of rent in the amount of \$600.00 for the period of 1-July-2023 to 31-December-2023 as the landlord did not have the right to increase the rent more than once in a 12-month period.

11. The tenant testified that they notified the landlord that they would be vacating the unit on 20-December-2023 and wished to sublet the unit to friends and the tenant testified that the new tenants took possession on 23-December-2023. The tenant testified that the landlord approved the new tenants and decided that the new tenants could take over the original tenant's agreement (assign the tenancy) and free the tenants from any further landlord tenancy obligations. The tenants are seeking a pro-rated refund of rent in the amount of \$513.00 for the period of December 23-31 as the new tenants had taken over the unit at that point.

## **Analysis**

12. 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.*

13. 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.*

14. I accept that the tenants agreed to pay the initial rent increase in November 2022 out of fear of receiving a termination notice. However the landlord contravened Section 16 of the *Act* as stated above by not giving a proper 6 month notice and as such, the initial rent increase should not have come into effect until 1-March -2023. For this reason, I find that the tenants are entitled to a refund of rent in the amount of \$400.00 for the period of 1-November-2022 to 28-February-2023.

15. I accept that the tenants agreed to enter into a new written rental agreement in July 2023 to protect themselves from further rent increases and they agreed to pay the second rent increase at that time. However the landlord contravened Section 16 of the *Act* as stated above by increasing the rent more than once in a 12-month period and as such, the second rent increase could not have come into effect until February 2024. Also, in accordance with Section 13 of the *Act* as stated above, the tenancy was a continuous tenancy, and the landlord did not have the right to enter into a new rental agreement to

benefit himself financially. For those reasons, I find that the tenants are entitled to a refund of rent in the amount of \$600.00 for the period of 1-July-2023 to 31-December-2023.

16. With regards to the pro-rated rent for the period of December 23-31,2023 when the new tenants had possession of the unit, I find that the landlord assigned the unit to the new tenants, and they should have been responsible for rent for that period. I find that the tenants are entitled to a refund of rent in the amount of \$442.62 for the period of December 23-31, 2023 in the amount of \$442.62 ( $\$1500 \times 12 \text{ mths} = \$18000 / 366 \text{ days} = \$49.18 \text{ per day} \times 9 \text{ days} = \$442.62$ )
17. In conclusion, I find that the landlord is responsible to refund rent to the tenants in the amount of \$1442.62.

### **Decision**

18. The tenant's claim for a *refund of rent* succeeds in the amount of \$1442.62.

### **Issue # 2: Refund of security deposit \$150.00**

#### **Analysis**

19. Section 14 of the *Residential Tenancies Act, 2018* states:

##### **Security deposit**

14. (8) *A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.*
- (9) *Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.*
- (10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*
  - (a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*
  - (b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*
- (11) *Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).*

20. In accordance with Section 14 of the *Act* as stated above, the landlord failed to apply to the director to retain a portion of the security deposit. I asked the tenant if they entered into an agreement with the landlord allowing him to retain \$150.00 of the security deposit and he responded that they had not. For those reasons, I find that the landlord has a responsibility to refund the portion of the security deposit that he retained in the amount of \$150.00. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest rate is calculated as simple interest and is not

compounded. The annual interest rate for 2022-2023 was 0% and is currently 1% for 2024-2025.

### **Decision**

21. The tenant's claim to have the remainder of the security deposit refunded succeeds.

### **Issue # 3: Hearing expenses \$20.00**

22. The tenants paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#3). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees can be claimable costs. As the tenant's claim for losses has been successful, I find that the landlord shall pay the tenant's hearing expenses.

### **Decision**

23. The tenant's claim for *hearing expenses* succeeds in the amount of \$20.00.

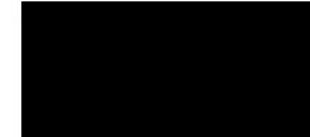
### **Summary of Decision**

24. The landlord shall pay the tenants \$1614.26 as follows:

Refund of rent.....	\$1442.62
Refund of security deposit .....	150.00
Interest on security deposit .....	1.64
Hearing expenses .....	20.00
 Total .....	 \$1614.26

February 19, 2025

Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office