

Residential Tenancies Tribunal

Application 2022 No. 322NL

Decision 22-0322-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:49 PM on 14 June 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", also participated.

Issues before the Tribunal

3. The tenant is seeking the determination of the validity of 3 termination notices issued to her in April 2022.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 16, 18, 29 and 34 of the *Residential Tenancies Act, 2018*.

Issue 1: Validity of Notice

Relevant Submissions

The Tenant's Position

6. The tenant stated that she had been living in this apartment for the past 25 years, and during that time, there have been around 3 different landlords. [REDACTED], the current landlord, purchased the property in 2013, and the tenant submitted a

copy of a fixed-term lease she had entered into with the landlord in January 2014 (█ #1).

7. On 29 November 2021, the landlord and tenant renewed that lease, for a fixed term of 7 months, for the period running from 01 February 2022 to 31 August 2022. Prior to that lease being signed, the agreed rent was set at \$750.00. In this latest lease, it states that the rent is set at \$850.00.
8. The tenant acknowledged signing this new lease, but she claimed that when she did so, she had not read through that document, and she did not realize that the landlord had increased the rent by \$100.00, until the landlord informed her after she signed it. She stated that she did not agree with that increase and she also pointed out that the landlord had not given her a 6-month notice of rental increase. She claimed, though, that she did not realize at the time of signing the lease that the landlord was required to provide her with such a notice.
9. In April 2022, the tenant was late paying her rent and she agreed to leave cheques in her mailbox, for the rent for April and May 2022, for the landlord to collect. The following e-mail exchange took place on 13 April 2022:

Landlord: Hi █, I just looked at the cheques. I noticed that the one for May is for \$750. As you remember we agreed that the rent increase to \$850 would start as of May 1. Wondering if you want to give me another one for \$100 or should I bring back over the one for \$750 and you can give me a new one for \$850. Please let me know. Thanks

Tenant: I can give you a new one later on....right now I am in isolation again....last night my son tested positive for covid and this routine starts all over again....when things settle down I will contact you

Landlord: You and I agreed to May 1. We took into account all the time since we first told you about the increase. You and I both settled on May 1. █

Tenant: The first time you told me about the increase was November 29 when I signed the new lease....I settled on 6 months notice....I am going to talk to Landlords Assn. before I say another word....I am tired of this bickering and I want to hear what they got to say

Landlord: █, You and I agreed to May 1. If you are changing your mind on that, it is fine but I am not dealing with this anymore. I am simply going to issue a termination notice and find another tenant. I've been patient with this. Time to get moving. Please let me know what you want to do and I'll prepare the adequate paper work. █

Tenant: So now this leads to a threatl consider...after I talk to the Landlord Association I am going to seek legal advice from my lawyer █I fought you for my legal rights to be notified 6

months in advance and I did not settle for 5....I consider your e-mail as a scare tactic and it's not working

10. On the following day, 14 April 2022, the tenant stated that she had found a termination notice nailed to her door, and a copy of that notice was submitted with her application (█ #2). That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 July 2022.
11. The landlord informed the tenant, shortly after he had issued that notice, that the dates were incorrect on that notice and, on 28 April 2022, the landlord issued the tenant with 2 other notices (█ #3). These notices were also issued under section 18 of the Act, but they both had termination dates of 31 August 2022.
12. The tenant reiterated that she had been living at the unit for about 25 years and she also pointed out that if she were evicted, she would have no where to go as the current rental market in █ is poor. She claimed that she had done nothing wrong to deserve being issued these termination notices and argued that the landlord had issued them out of anger.
13. The tenant is seeking a determination of the validity of those 3 termination notices issued to her in April 2022.

The Landlord's Position

14. Regarding the rental increase, the landlord acknowledged that he had not given the tenant a 6-month, written notice, as required by the *Residential Tenancies Act, 2018*. But he claimed that he had informed the tenant as early as May 2021 that he was going to increase her rent. He also pointed out that, in recognition of the fact that he had not given her a 6-month notice, when the tenant signed her lease in November 2021, he did not enforce that increase when the lease commenced on 01 February 2022, but instead he agreed that the increase would only kick in on 01 May 2022, 6 months after the lease was signed.
15. With respect to the termination notice issued to the tenant on 14 April 2022, the landlord acknowledged that that notice was invalid as the indicated termination date was 31 July 2022, while the lease was not set to expire until 31 August 2022. When he realized that error, the landlord issued corrected notices on 28 April 2022, with terminations dates of 31 July 2022.
16. The landlord stated that he had issued 2 notices on 28 April 2022, instead of just 1, as he wasn't sure if the lease was valid, given that the rent is set at \$850.00 and that he had not issued a proper notice of rental increase. If the lease remains valid, even though the rent is incorrectly stated, then it expires on 31 August 2022, and one of those notices indicates that the landlord is terminating a fixed-term agreement on that date. If the lease is not valid because of the incorrectly stated rate of rent, then the landlord figured that the tenancy was just

running on month-to-month basis, and the second notice indicates that the landlord is terminating a month-to-month rental agreement.

17. With respect to the validity of these 2 notices, the landlord pointed out that these were “no-cause” notices and he was entitled to terminate his agreement with the tenant without having to provide any reasons to her.
18. The landlord acknowledged that the time-line of his conversation with the tenant concerning the rental increase and the issuance of the termination notices makes it look as if they are connected, but he denied that that was the case. Rather, he claimed that there had been long-standing issues with the tenant and he came to the realization after she had reneged on her agreement to pay the rent increase that her continued tenancy was no longer viable. For instance, he claimed that the tenant had been complaining to him about maintenance issues at the unit, but she refused to fill out the appropriate work-order forms for his maintenance staff. He also stated that the tenant has lost her temper with him on several occasions when discussing maintenance issues and when discussing the issue of rent. The landlord also claimed that he may be soon selling the property, and he would want to have her vacated before such a sale goes through.

Analysis

19. Section 18 of the *Residential Tenancies Act, 2018* states that a landlord may terminate a fixed-term lease, or a monthly rental agreement, by providing a tenant with a 3-month, written notice, meeting the requirements set out in that section of the *Act* and under section 34. On the face of it, the notices the landlord had issued to the tenant, on 28 April 2022, meet all of those requirements. The landlord is also right to point out that under this section of the *Act*, there is no requirement that a landlord provide reasons to the tenant as to why he is issuing such a notice.
20. However, section 29 of the *Act* also states:

Termination for invalid purpose

29. (1) A landlord shall not

- (a) *terminate or give notice to terminate a rental agreement; or*
- (b) *directly or indirectly coerce, threaten, intimidate or harass a tenant or a member of a tenant's family,*

in retaliation for, or for the purpose of deterring the tenant from, making or intervening in a complaint or application in relation to a residential premises.

(2) Where a tenant who is served with a notice of termination of a rental agreement believes that the landlord has contravened subsection (1), he or she may, not later than one month after receiving the notice,

apply to the director under section 42 for an order declaring that the rental agreement is not terminated.

21. With respect to the issue of the rental increase, the landlord acknowledged that he had not issued the tenant any written notice of such an increase, as required by section 16 of the Act, which 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.

22. Accordingly, as no notice of rental increase was issued to the tenant, meeting the requirements set out above, the increase from \$750.00 to \$850.00 could not be included in the lease that the tenant had signed in November 2021, even if she had made no objection. Likewise, without a written notice of increase, the landlord and tenant also could not have verbally agreed, in November 2021, that the rent would increase by \$100.00 on 01 May 2022. A written notice must have been previously given, and, besides the rate of rent cannot change during the course of a fixed-term lease.
23. In the submitted e-mail exchange, it does appear that the tenant may have initially agreed to a rental increase 6 months after the lease was signed, even though that is contrary to the *Act*, but it is also clear in that exchange that the tenant is looking to determine her rights, as a tenant, and she informs the landlord that she will contact this Board to make inquiries. In response, the landlord informs the tenant that he will terminate their agreement, and on the following day he issues the tenant with the first termination notice. It would stretch credulity to think that the landlord had issued that termination notice for any other reason than that she had refused to pay the improper increase and because she had indicated she would make inquiries with this Board to determine her rights. Or put another way, I find that notice was issued in "retaliation" for not paying the improper rental increase and to "deter" the tenant from making a complaint to this Board
24. As the tenant had a right, under the *Residential Tenancies Act, 2018*, not to be subject to any improper rental increase, and as the landlord had issued her with a termination notice in response to her attempt to secure that right by contacting this Board, I conclude that the 3 notices issued to her in April 2022 were given for an invalid purpose and, are, therefore, void and of no effect.

Decision

25. The 3 termination notices issued to the tenant in April 2022 are invalid.

Issue 2: Reinstatement of the Landlord's Right to Terminate

26. Despite my finding that the termination notices issued to the tenant in April 2022 were given for an invalid purpose, as contemplated under section 29 of the *Act*, it has to be recognized that landlords in this province do have the right to terminate tenancies, as outlined in section 18, without having to provide reasons to either the tenant or this Tribunal.
27. Tenants in this province do not have a right to security of tenure and section 29 of the *Act* ought not to be utilized as a means to gain such security. However, it would seem to be for an equally invalid purpose if the landlord were to issue another s. 18 notice to the tenant, say, the day after this decision was released

(or 2 days after, etc.). Some balance must be struck. Accordingly, I think it is appropriate that there be a “cooling off” period and I therefore order that the landlord is prohibited from issuing the tenant another termination notice under section 18 of the Act until 01 September 2022, at which point he is once again authorized to exercise that right. This prohibition has no effect on the landlord’s right to issue a termination notice for cause, as indicated in sections 19 through 24 of the Act.

Decision

28. The landlord is prohibited from issuing to the tenant a termination notice, under section 18 of the *Residential Tenancies Act, 2018* until 01 September 2022.

Issue 3: Hearing Expenses

29. The tenant submitted a hearing expense claim form with her application, as well as a receipt for \$20.00 for the costs of filing this application and a receipt for \$17.17 for the costs of serving the landlord with the notice of the hearing by registered mail. As the tenant’s claim has been successful, the landlord shall pay these hearing expenses.

Summary of Decision

30. The 3 termination notices issued to the tenant in April 2022 are invalid.
31. The landlord is prohibited from issuing the tenant a termination notice, under section 18 of the *Residential Tenancies Act, 2018*, until 01 September 2022.
32. The landlord shall pay to the tenant the amount of \$37.17, in compensation for her hearing expenses.

20 June 2022

Date


John R. Cook
Residential Tenancies Tribunal