

Residential Tenancies Tribunal

Application 2022 No. 718NL

Decision 22-0718-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 29 September 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 following:
 - A determination of the validity of a termination notice issued to him 19 July 2022, and
 - An order for a refund of rent in the amount of \$500.00.

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 and 29 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenant amended his claim at the hearing and stated that he was now seeking a refund of rent totalling \$550.00.

Issue 1: Refund of Rent - \$550.00

Relevant Submissions

The Tenant's Position

7. The tenant stated that he had entered into a verbal rental agreement with the landlord on 01 March 2021. The agreed rent at that time was set at \$350.00 per month.
8. The tenant stated that on 03 August 2021 he received a call from the landlord informing him that the rent would be increasing from \$350.00 to \$400.00 per month, commencing 01 November 2021.
9. The tenant testified that during that call he had pointed out to the landlord that he was not allowed to increase the rent during the first 12 months of a tenancy and he stated that he also had informed him that he had to provide him with a notice of increase at least 6 months before it took effect. The tenant stated that the landlord told him that these rules did not make sense and he intimated that he would evict the tenant if he did not agree to the increase.
10. The tenant stated that he complied with the landlord's rental increase, and since November 2021 he has been paying \$400.00 per month. The tenant maintained that the landlord's rental increase was in violation of the section 16 of the *Residential Tenancies Act, 2018* and he is seeking an order for a refund of the extra rent he had paid for the period from November 2021 to September 2022, a period of 11 months, totalling \$550.00.

The Landlord's Position

11. The landlord claimed that when the tenant moved into the rental property, he had undervalued the tenant's room and he later determined that the tenant ought to be paying more. He also claimed that the costs of utilities had just about doubled by this point.
12. The landlord characterized the interaction he had with the tenant in August 2021 as a negotiation, and he claimed that he had not unilaterally raised the rent. Rather, he stated that they had both mutually agreed to a \$50.00 increase, and the tenant had been complying with that increase, without complaint, since November 2021.
13. The landlord argued that if it is found that that increase was not in compliance with rules set out in the *Residential Tenancies Act, 2018*, any decision on a refund of that rent ought to take into consideration the fact that the tenant had agreed to the rental increase, without complaint, and that he had been paying the increased amount for 11 months.

Analysis

14. Section 16 of the *Residential Tenancies Act, 2018* deals with rental increases and the relevant subsections state:

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.

...

(7) Notwithstanding subsection (1), where the landlord and tenant agree in writing, a landlord may increase the amount of rent payable by a tenant for the residential premises without notice under subsection (3) where the increase is due to the provision of a service, facility, privilege or benefit, including a parking space, that was not previously provided under the rental agreement.

15. The tenant is right to point out that the increase the landlord had imposed in August 2021 violates the provisions set out in ss. 16.(2), 16.(3)(a) and 16.(4). As this tenancy began in March 2021, notwithstanding the fact that, as the landlord claims, the tenant had agreed to the increase, the earliest the landlord could have increased the rent would have been 01 March 2022, and only if he had provided the tenant with the appropriate, written notice sometime prior to 01 September 2021.
16. The landlord claimed that the increase was given as the costs of utilities had increased, but according to s. 16.(7), as the provision of these utilities were already included in the rent the tenant was paying when he moved in in March 2021, a landlord could not invoke this subsection to justify that increase.
17. As the increase did not meet the timeframe requirements set out in this section of the *Act*, as the increase was not the result of the provision of a new service or facility, and notwithstanding the claim that the tenant had agreed to the increase, I find that the tenant ought not to have paid, and the landlord ought not to have accepted, that extra \$50.00 each month since November 2021. As such, the tenant's claim succeeds.

Decision

18. The tenant's claim for a refund of rent succeeds in the amount of \$550.00.
19. Commencing 01 October 2021, the monthly rate of rent is set at \$350.00 until such time that the landlord provides the tenant with a proper notice of rental increase.

Issue 2: Determination of Validity of Termination Notice

Relevant Submissions

The Tenant's Position

20. The tenant stated that because he believed that the rental increase the landlord had imposed was invalid, he had decided to file an Application for Disputes Resolution with this Section to have that matter addressed. On 19 July 2022 he contacted the landlord, by text-message, seeking his mailing address for the

purposes of filling out the application. The following is the exchange that the tenant had with the landlord on that date:

Landlord: Yes. I understand. But what is the dispute over?

Tenant: As of now, rent.

Landlord: Rent? Why?

Tenant: Well I got in touch with tenancy board regarding other issues and the rent increase came up. Last year there was an unlawful rent increase so the dispute will be regarding that.

Landlord: I see. Couldn't find the time to discuss this with me

Tenant: You're yet to respond to my earlier texts or explain that eviction episode that happened.

Landlord: The one you never responded to and ignored.

...

Tenant: I never got the call.

Landlord: I tell you what, consider Aug 1, 2022 to be your proper notice to vacate the house as of Oct 31, 2022, which is the 3 month notice. Which I am legally permitted to do.

You can proceed with the application and if I was wrong in increasing your rent then they will ask me to refund the differential.

Tenant: Okay.

Is there a reason for this eviction notice?

Landlord: With a 3 month notice there don't have to be a reason. I'll be in touch regarding showing the room

21. The tenant argued that this notice of termination was invalid as it did not meet the requirements set out in section 34 of the *Residential Tenancies Act, 2018*, and also because it was issued out of retaliation, contrary to section 29. The tenant pointed out that the notice did not contain the address of the rental unit and that it was not in the prescribed form, and he also claimed that the landlord had issued him the notice in retaliation because he was seeking to make an application to this Section.
22. The tenant is seeking an order for declaring that this termination notice is invalid.

The Landlord's Position

23. The landlord argued that the notice was not issued in retaliation and he pointed out that in the text-message exchange with the tenant, he indicated that he was willing to refund the extra rent to the tenant if that was view of this Tribunal.
24. The landlord reiterated what he had written to the tenant, and he argued that he has a right, under the *Act*, to issue a 3-month termination notice to his tenants and he is not required to provide any reasons.

Analysis

25. 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.
26. Although the notice the landlord had sent to the tenant on 19 July 2022 is a 3-month notice, the tenant is correct that that text-message does not meet any of the 4 requirements set out under section 34, which states:

Requirements for notices

34. A notice under this Act shall

- (a) *be in writing in the form prescribed by the minister;*
- (b) *contain the name and address of the recipient;*
- (c) *identify the residential premises for which the notice is given; and*
- (d) *state the section of this Act under which the notice is given.*

Those deficiencies render that text-message notice void and of no effect.

27. Besides those deficiencies, though, the tenant also complained that the notice was also in violation of section 29 of the *Act*, which 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.

28. The question of whether a notice was issued in retaliation is solely one of cause and effect. Did the fact that the tenant made an application, or was considering making an application to this Section, cause the landlord to issue the termination notice?
29. The landlord is correct to point out that he does not have to provide reasons to either the tenant or this Board as to why he was issuing a 3-month notice, under section 18 of the Act. But based on the text-message evidence submitted by the tenant, it would stretch credulity to think that the landlord had issued that termination notice for any reason other than the fact that the tenant had informed him that he was making application to this Section. That conclusion is bolstered by the fact that the issuance of the notice occurred immediately after the tenant informed him about making the application.
30. I conclude, therefore, that the notice is not only technically deficient, in that it does not meet the requirements set out in section 34, but it was also given for an invalid purpose.

Decision

31. The termination notice issued to the tenant 19 July 2022 is not a valid notice.

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

32. Despite my finding that the termination notices issued to the tenant on 19 July 2022 was 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.
33. 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 January 2023, 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

34. The landlord is prohibited from issuing to the tenant a termination notice, under section 18 of the *Residential Tenancies Act, 2018* until 01 January 2023.

Issue 3: Hearing Expenses

35. 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. As his claim has been successful, the landlord shall pay that hearing expense.

Summary of Decision

36. The tenant is entitled to a payment of \$570.00, determined as follows:

a) Refund of Rent.....	\$550.00
b) Hearing Expenses.....	\$20.00
c) Total.....	<u>\$570.00</u>

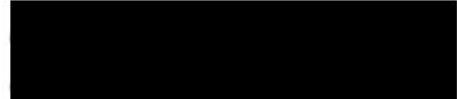
37. Commencing 01 October 2022, the monthly rate of rent is set at \$350.00.

38. The termination notice issued to the tenant on 19 July 2022 is invalid.

39. The landlord is prohibited from issuing the tenant a termination notice, under section 18 of the *Residential Tenancies Act, 2018*, until 01 January 2023.

12 October 2022

Date


John R. Cook
Residential Tenancies Tribunal