

Residential Tenancies Tribunal

Application 2023 No. 33NL

Decision 23-0033-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 09 February 2023 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

3. The landlord is seeking an order for a payment of rent in the amount of \$800.00.

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 is section 16 of the *Residential Tenancies Act, 2018*, and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no available telephone number where he could be reached. 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. With her

application, the landlord submitted an affidavit stating that she had personally served the tenant the application on 27 January 2023. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

7. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$500.00.

Issue 1: Rent - \$500.00

Relevant Submissions

8. The landlord submitted a rental agreement with her application showing that the tenant had entered into 6-month, fixed-term lease with █ on 01 August 2022. The agreed rent was set at \$600.00 per month and the landlord stated that the tenant had paid a security deposit of \$300.00.
9. █ sold the unit in November 2022, and on 15 November 2022 the new owners hired the landlord to manage the property.
10. With her application, the landlord submitted her rent records showing the payments she had received from the tenant since December 2022. These records show that the tenant had only paid \$400.00 for each of December 2022 and January 2023, leaving a balance of \$400.00 at the end of January 2023.
11. With respect to the rent for February 2023, the tenant had paid \$800.00 towards the rent for that month on 03 February 2023. This would have brought the balance down to \$200.00, but the landlord pointed out that MD had served the tenant with a notice of rental increase back on 27 July 2022, indicating that his rent would increase, effective 01 February 2023, by \$300.00, to \$900.00 per month. This increase, plus the \$200.00, leaves the tenant with a total balance owing of \$500.00. The landlord is seeking an order for a payment of that amount.
12. When I pointed out to the landlord that this notice of rental increase was issued before this tenancy began, she suggested that the submitted lease was probably not the initial agreement, but rather a lease renewal.

Analysis

13. I accept the landlord's claim that the tenant had only paid a total of \$1600.00 for the months of December 2022, January 2023 and February 2023. Leaving aside the issue of the rent increase, this leaves the tenant with a balance of \$200.00.
14. And regarding the rental increase, the relevant subsections of section 16 of the *Residential Tenancies Act, 2018* 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,

...

(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

...

(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. If this tenancy began on 01 August 2022, as the landlord had initially stated at the hearing, then the submitted notice of rental increase is not valid as a landlord cannot increase rent during the first 12 months of the tenancy.
16. If the submitted lease is a renewal of an already existing agreement, as the landlord later suggested, then the notice of increase would be valid, so long as this tenancy began sometime before 01 February 2022. Did this tenancy begin before then? No evidence was presented at the hearing which could help make a finding on this matter, one way or the other. Absent such evidence, I find that the tenant owes \$200.00 only.

Decision

17. The landlord's claim for a payment of rent succeeds in the amount of \$200.00.

10 March 2023

Date

John R. Cook
Residential Tenancies Tribunal