



Residential Tenancies Tribunal

Application 2023-No.0464-NL

Decision 23-0464-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 27-June-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.
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 reached him by telephone [REDACTED] at the start of the hearing; however he disconnected the call. 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 tenant submitted an affidavit with her application stating that she had served the landlord with notice of the hearing, by email [REDACTED], on 23-May-2023, and a copy was also submitted with her application. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in his absence.

Issues before the Tribunal

5. The tenant is seeking:
 - Validity of termination notice
 - Validity of rental increase

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 16: Rent increase, and Section 18: Notice of termination of rental agreement.

Issue 1: Validity of termination notice

Relevant Submissions

8. The tenant stated that she had a written term agreement beginning 15-February-2020 that commenced on 14-January-2021; at that time her agreement becomes monthly. She said she pays \$1,000.00 per month on the 15th day; her rental period is from the 15th of the month until the 14th of the following month. She did not pay a security deposit.
9. She explains that she rents 1 apartment in a four-plex and that building recently sold. She said on 02-May-2023 the new owner came to her unit and served her with two pieces of paper: A letter (TT#02) stating her rent will increase to \$2,000.00 a month as of 01-August-2023 instructing her that she has to contact him by 09-May-2023 to let him know if she accepts the increase or she will need to vacate by 01-August-2023. As well as (TT#04) an incomplete landlord's notice to increase rent.
10. The tenant said she told the landlord that he had to give her proper notice. She believes he checked on this and subsequently on 15-May-2023 he served her with another letter stating "I regret to inform you that I will have to give you notice to terminate by September 1, 2023."

Analysis

11. According to Section 18 of the *Residential Tenancies Act, 2018*:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*
- (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*
- (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

.....

(9) In addition to the requirements under section 34, a notice under this section shall

- (a) *be signed by the person providing the notice;*
- (b) *be given not later than the first day of a rental period;*
- (c) *state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*
- (d) *be served in accordance with section 35.*

12. The termination notices served by the landlord (TT#02 & TT#03) do not meet the requirements of the *Act* and are not valid. The tenant's rental period is from the 15th of each month until the 14th day of the next month. The landlord's notice ends her rental agreement on the 1st day of the month, which is not the last day of her rental period as stated in section 18 (2) (b) and 18 (9) (c) of the *Residential Tenancies Act, 2018*.

13. Additionally, neither notice states the section of the *Act* under which the notice is given; as follows:

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.*

Decision

14. The termination notices with a termination dates of 01-August -2023 and 01-September-2023 are not valid.

Issue 2: Validity of rental increase

Relevant Submissions

15. The tenant is also questioning the validity of the rental increase mandated by the landlord. As stated in paragraph 9: the tenant said a letter (TT#02) stating her rent will increase to \$2,000.00 a month as of 01-August-2023 and instructing her that she has to contact him by 09-May-2023 to let him know if she accepts the increase or she will need to vacate by 01-August-2023. He also provided a Landlord's Notice to Increase Rent form (TT#04), that was included with the rent increase letter. This notice was only partially completed and not signed or dated.

16. The tenant stated that she checked with our office and told the landlord he must give her six months' notice of a rent increase. She said after that conversation she received the 01-September-2023 termination notice.
17. She states that he has basically decided to evict her because she didn't agree to an increase in rent. She states that this is very unfair and that she lives in an area where housing is difficult to access.

Analysis

18. In accordance with Section 16, of the *Residential Tenancies Act, 2018*, a landlord must give six months' notice, when applying a rent increase. The increase is also to be effective on the first day of the rental term, which for this rental agreement, is the 15th of the month, not the first. Additionally, he is to show on the notice, not only the amount of rent payable but also the amount of the increase as follows:

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.

(5) Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.

(6) The director may, upon hearing an application under section 42, value a service, privilege, accommodation or benefit discontinued or unavailable for a time under subsection (5).

(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.

19. This notice does not meet the requirements of the *Act* and the rent increase is not valid.

Decision

20. The rental increase mandated by the landlord for 01-August-2023 is not valid.

Issue 3: The Landlord's Right to Terminate

21. A landlord may not terminate a rental agreement in retaliation for a tenant not agreeing to violate their own rights under the *Residential Tenancies Act, 2018*, as follows:

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.

22. I determine that the tenant was given both termination notices in response to her dispute to the increase in her rent without appropriate notice. The landlord may not coerce the tenant to agree to a rent increase that is in violation of her rights under the *Act*. Landlords do have the right under Section 18 of this *Act*, to end a rental agreement with their tenants. However, it would negate the purpose of this decision, should the landlord immediately issue a three month notice upon the release of this decision.

23. I therefore determine, in accordance with Section 47 (1) (p), that the landlord shall not terminate the rental agreement with this tenant until after the six month period required for a rental increase has been reached. This would thereby permit the landlord to apply the increase in rent in accordance with the Act and maintain the rental agreement with the tenant, should both parties wish to continue with the agreement.

Order of director

47. (1) After hearing an application the director may make an order

.....

(p) imposing terms and conditions the director considers appropriate, including terms and conditions to ensure compliance with this Act and the rental agreement;

24. I determine that the landlord may not issue a Section 18 termination notice prior to the 15-November-2023 rental period.

Decision

25. The landlord may not issue a Section 18 termination notice prior to the 15-November-2023 rental period.

Issue 4: Hearing expenses reimbursed \$20.00

26. The tenant submitted the receipts for \$20.00 for the cost of the hearing (TT#05) and \$35.00 for the cost of a Commissioner of Oaths (TT#06), totaling \$55.00; pursuant to policy 12.01, she is entitled to reimbursement of that cost from the landlord.

Summary of Decision

27. The termination notices dated for 01-August-2023 and 01-September-2023 are invalid.

28. The rental increase dated 01-August-2023 is invalid.

29. The landlord is prohibited from issuing a termination notice, under Section 18 of the *Residential Tenancies Act, 2018*, until the 15-November-2023 rental period.

30. The landlord shall reimburse the tenant for the cost of her hearing expenses totaling \$55.00.

July 4, 2023 _____
Date

[REDACTED]
Jacqueline Williams, Adjudicator
Residential Tenancies Office