

## Residential Tenancies Tribunal

Application 2023 No. 491NL

Decision 23-0491-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:06 AM on 24 August 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, was also in attendance.

### Issues before the Tribunal

3. The tenants are seeking the following:
  - An order for a payment of \$2153.29 in compensation for inconvenience,
  - An order for a refund of the \$825.00 security deposit, and
  - A determination of the validity of a termination notice issued to them by the landlord.

### 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 14, 18, 29 and 34 of the *Residential Tenancies Act, 2018*.

## Issue 1: Validity of Termination Notice

### Relevant Submissions

#### The Tenants' Position

6. The landlord and the tenants entered into a monthly rental agreement on 01 October 2022, and a copy of that executed agreement was submitted with the tenants' application. The agreed rent was set at \$1100.00 per month, and it is acknowledged in the rental agreement that the tenants had paid a security deposit of \$825.00.
7. On 22 May 2023, the landlord sent a text-message to the tenants informing them that he was terminating their rental agreement and that they were to vacate in 3 months. A copy of that text-message was submitted with their application. The tenants are seeking a determination of the validity of that notice.
8. On 17 June 2023, the tenants sent their own termination notice to the landlord and they vacated on 30 June 2023.

#### The Landlord's Position

9. The landlord acknowledged that he had sent this termination notice to the tenants.

### Analysis

10. The relevant subsections of section 18 of the *Residential Tenancies Act, 2018* state:

#### ***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*

...

*(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*

*(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.*

and section 34 of this Act 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.*

11. I find that the termination notice that the landlord had sent to the tenants on 22 May 2023 is not valid, and for the following reasons: it does not state the date that the rental agreement was to terminate, as required by s. 18.(9)(c), it was not in the form prescribed by the minister, as required by s. 34.(a), and it does not state the section of the *Act* under which the notice was given, as required by 34.(d).
12. Furthermore, it is apparent from the tenants' screenshot of their text-message exchange with the landlord that this termination notice was sent in direct reply to the tenants' demand that he restore the internet service at the rental unit, and their assertion in that message that if he does not remedy this breach of contract, the tenants would explore their legal options. That is, the issuance of the termination notice was retaliatory, which is prohibited under 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.*

## **Decision**

13. The termination notice sent to the tenants on 22 May 2023 is not a valid notice.

## **Issue 2: Refund of Security Deposit - \$825.00**

### **Relevant Submissions**

#### **The Tenants' Position**

14. The tenants stated that the landlord did not return the security deposit to them after they vacated and they testified that they had not entered into any written agreement with the landlord on its disposition.
15. The tenants are seeking an order for a refund of the full amount of the security deposit.

#### **The Landlord's Position**

16. The landlord acknowledged that he had not returned the security deposit to the tenants, and he also stated that he had not entered into any written agreement with them on its disposition.
17. The landlord stated that he had kept the deposit because of damages the tenants had caused to the rental property and because they had not cleaned the unit.

## **Analysis**

18. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

### ***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).*

*(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.*

19. It is not disputed that the tenants had paid a security deposit of \$825.00 and that it had not been returned to them by the landlord after they had moved out. It is also not disputed that the tenants and the landlord had not entered into an written agreement on the disposition of that deposit.
20. As the landlord has not made an application to the Director of Residential Tenancies to determine the disposition of the security deposit, he is required, as per subsection 14.(12) of the *Act*, to refund the full amount of the security deposit to the tenants.

## **Decision**

21. The tenants' claim for refund of the security deposit succeeds in the amount of \$825.00.

## **Issue 3: Compensation for Inconvenience - \$2153.29**

### **Relevant Submissions**

#### The Tenants' Position

22. Tenant1 stated that the provision of Wi-Fi internet was included in the rent that the tenants were paying to the landlord.
23. Tenant1 stated that on 13 May 2023, the landlord's son, who resided in the upstairs apartment, disconnected the internet as he was moving out of that apartment. Tenant1 testified that she had tried to contact the landlord to have the internet restored, but she was unable to reach him. She claimed that she eventually contacted Rogers to have the internet reconnected, but she claimed that the landlord would not permit them to do so because he did not want new holes put in the walls.

24. Because the tenants did not have access to Wi-Fi, they claimed that they had to rely on the data package that was part of their mobile phone plans, and tenant1 stated that they were required to purchase extra data as well. The tenants are seeking compensation in the amount of \$150.00 for the inconvenience they suffered for the period from 13 May to 30 June 2023, while they were without Wi-Fi and were relying on their mobile phone plans.
25. Additionally, tenant2 is seeking a payment of \$2003.29 in compensation for lost wages. He stated that he works as a developer and because he did not have access to Wi-Fi internet, he was unable to deliver a project and therefore he lost his salary. In support of his claim, the tenants submitted a salary paystub showing that tenant2 was not paid any wages for the period between 21 May and 21 June 2023.

### The Landlord's Position

26. The landlord stated that the internet was disconnected on 01 June 2023. He acknowledged that he had prevented the tenants from having Rogers install an internet connection at the unit and he claimed that he had done so because the unit was pre-wired for Bell Aliant internet.
27. He stated that he had contacted Bell about restoring the Wi-Fi internet and he claimed that it took a couple of weeks before they were able to visit the property. He testified that the internet was restored in mid-June 2023, and the tenants had access to it again after that point. He stated that he had not informed the tenants that the internet had been restored.

### **Analysis**

28. I accept the tenants' claim that the Wi-Fi internet was disconnected on 13 May 2023, and that the tenants were without that service for a month and a half. No evidence was presented by the landlord showing that the internet had been restored in mid-June 2023, and he acknowledged at the hearing that he had not informed them that it had been restored.
29. As this internet service was included as part of the rent that the tenants were paying to the landlord, discontinuing this service is deemed to be an improper rental increase, as contemplated under section 15 of the *Act*, the relevant subsections being:

#### ***Rental increase***

**16. (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).*

30. I also accept the tenants' claim that the discontinuance of the internet was an inconvenience and it resulted in a reduction of their enjoyment of the rental premises. Under the authority of subsection 16.(6), I value that the loss of that service, for the period from 13 May to 30 June 2023 to be \$150.00, as claimed.
31. With respect to tenant2's loss of income, I find that insufficient evidence was presented at the hearing to show that that loss was directly related to the absence of Wi-Fi internet at the rental property. For that reason, that part of the tenants' claim does not succeed. But additionally, the tenants stated that they did have access to the internet during this period as they were able to access data through their mobile phones, and I am of the view that even if that data package was insufficient, tenant2 could have found ways to mitigate such a significant loss of income—e.g., he could have topped up his data package (tenant1 testified that this would have cost \$200.00), or he could have travelled to a location where Wi-Fi internet was available (such as a library or a café).

### **Decision**

32. The tenants' claim for compensation for inconvenience succeeds in the amount of \$150.00.

### **Summary of Decision**

33. The termination notice issued to the tenants on 22 May 2023 is not a valid notice.
34. The tenants are entitled to a payment of \$975.00, determined as follows:

a) Refund of Security Deposit .....	\$825.00
b) Compensation for Inconvenience .....	\$150.00
c) Total Owing to Tenants.....	<u>\$975.00</u>

18 September 2023

Date

  
John R. Cook  
Residential Tenancies Tribunal