

Residential Tenancies Tribunal

Application 2023 No. 629NL

Decision 23-0629-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:03 AM on 10 August 2023 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", was also in attendance.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of rent in the amount of \$900.00.

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*.

Issue 1: Refund of Rent - \$900.00

Relevant Submissions

The Tenant's Position

6. The tenant and the landlord entered into a written, 6-month, fixed-term lease on 02 August 2019. After that lease expired, it reverted to a month-to-month tenancy. The agreed rent was set at \$1000.00, due in 2 installments per month.

The tenant testified that she had also paid a \$600.00 security deposit in August 2019.

7. The tenant stated that the landlord had issued her 2 notices of rental increase in September 2022, and copies of those notices were submitted with her application. The tenant claimed that both of these notices were invalid, as they did not meet the 6-month notice requirement set out in the *Residential Tenancies Act, 2018*.
8. The first notice was provided to her on 01 September 2022, and it states that rent is increasing to \$1150.00 per month, effective 01 February 2023. The tenant pointed out that this was only a 5-month notice. The second notice was given to her on the following day, 02 September 2022, and it also stated that rent was increasing to \$1150.00, but the stated effective date in this notice was 01 March 2023. The tenant pointed out that this notice was 1 day short of being a 6-month notice.
9. The tenant testified that she has complied with the first notice that she had received, and since February 2023 she has been paying \$1150.00 per month to the landlord, or an extra \$150.00 per month, up to July 2023. For August 2023, she paid an extra \$75.00 with her first installment.
10. The tenant argued that as these notices of rental increase were invalid, she is entitled to a refund of the rent she had paid to the landlord for the period from 01 February to 31 July 2023, a total of \$900.00 (\$150.00 per month x 6 months).

The Landlord's Position

11. The landlord acknowledged that there was an issue with the first notice he had sent to the tenant, as it was only a 5-month notice. He corrected that issue on the following day, and issued the tenant a proper 6-month notice.
12. The landlord stated that he had reached out to the Tenancies Board after he had issued this second notice, and on 14 September 2022 he claimed that he was speaking with an officer from the Board who informed him that a typo will not render these notices invalid as they were issued just a day apart. He stated that he was informed that this was a common mistake, and that the 2 notices, taken together, are valid.

Analysis

13. Section 16 of the *Residential Tenancies Act, 2018*, deals with rental increases and subsection (3) states:

Rental increase

16. (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.

14. As this tenancy was running month-to-month in 2022, if the landlord wished to increase the rent for February 2023, he was required to provide notice to the tenant on, or before, 01 August 2022. As such, the tenant is wholly correct to point out that the first notice, dated 01 September 2022, is invalid.
15. If the landlord wished to increase the rent for March 2023, then notice would have to be given on, or before, 01 September 2022. As the second notice was given to the tenant on 02 September 2022, that notice is therefore also invalid, as the tenant argued.
16. But could the invalidity of these notices be explained away as typographical errors? Well, the first notice is dated 01 September 2022, and it was given to the tenant on that date. So, there is no error there. Six months on from 01 September 2022 is 01 March 2023, but the notice states that rent is increasing on 01 February 2023. Is that an unintentional slip of the pen—a typographical error? Or, would a reasonable person understand that the landlord unequivocally intended the rental increase date to be 01 March 2023, even though he had written “01 February 2023”? I am of the view that that would stretch credulity.
17. With respect to the second notice, there are no typographical errors here, as far as I can see. The notice is dated “02 September 2022” and it was given to the tenant on that date. So, again, no error or slip of the pen there. The landlord writes that the effective rent increase date is “01 March 2023”, and for the same reasons I just gave above, that must be the date that he intended.
18. The landlord has made an error, though, but it just wasn’t a typographical error. The error was that he had give the notice too late. On 02 September 2022, he issued a notice to increase rent, effective 01 March 2023. He should have given that notice the day before. That error is of the same kind as, if wanting to increase the rent for 01 March 2023, he had given the tenant a notice on 03 September 2022, or 15 November 2022, or 28 February 2023. None of those are 6-month notices.
19. As the landlord had not issued the tenant a valid notice of rental increase, I agree with her that her rent had not, in fact, increased, and the landlord had been collecting from the tenant, monthly, money which she did not owe him. To the

date of the hearing, I calculate that amount to be \$975.00, for the period ending 14 August 2023.

Decision

20. The rental increase notices issued to the tenant on 01 September and 02 September 2022 are not valid notices.
21. The tenant's current monthly rent remains at \$1000.00.
22. The landlord shall refund to the tenant the rent she had overpaid him for the period ending 14 August 2023: \$975.00.

Issue 2: Hearing Expenses

23. The tenant paid a fee of \$20.00 to file this application. As her claim has been successful, the landlord shall pay that hearing expense.

18 August 2023

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal