

## Residential Tenancies Tribunal

Application 2023 No. 690NL

Decision 22-0690-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:10 AM on 28 August 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. He was represented at the hearing by [REDACTED] (“WD”). The respondent, [REDACTED], hereinafter referred to as “the landlord”, was represented at the hearing by [REDACTED] (“DR”), [REDACTED] (“DM”), and [REDACTED] (“MF”). [REDACTED] (“RI”), the landlord’s caretaker, was also called as a witness.

### Issues before the Tribunal

3. The tenant is seeking the following:
  - A determination of the validity of a termination notice issued to him on 25 July 2023.
  - A determination of the validity of a notice of rental increase, dated 23 January 2023.

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

## Issue 1: Validity of Notice of Rental Increase

### Relevant Submissions

#### The Tenant's Position

6. The landlord and the tenant entered into a 1-year, fixed-term rental agreement on 01 August 2022, and a copy of that executed lease was submitted with the tenant's application. The agreed rent is set at \$950.00 per month, and it is acknowledged in the lease that the tenant had paid a security deposit of \$712.50.
7. With his application, the tenant submitted a copy of a notice of rental increase, dated 23 January 2023.
8. According to that notice, the landlord writes that she is increasing the rent by \$10.00 per month. The notice also states that, effective 01 August 2023, the tenant has 3 options concerning his monthly rent, contingent on whether he renews his agreement for another 1-year term, for a 6-month term, or whether he decides to let it run on a month-to-month basis. If the tenant selects the 1-year term, the rent will be \$960.00 per month, \$1010.00 for a 6-month term, and \$1060.00 per month if tenant opts for the month-to-month term.
9. That notice also states that the tenant has until 01 July 2023 to complete the form indicating the preferred option. If the form is not returned by that date, it states that the rent will be increased to \$1060.00 and the renewal will be deemed to be month-to-month.
10. The tenant testified that he only received that notice in July 2023. Upon receipt, he indicated on the form that he would renew for a 1-year term, with the rent increased to \$960.00, and he returned that form to MF on 27 July 2023. The tenant testified that MF informed him that he had missed the 01 July 2023 deadline and that his rent would increase to \$1060.00, and not \$960.00 as he had indicated.
11. WD argued that if the landlord had indeed given that notice to the tenant in January 2023, they should have some evidence to establish that fact, such as a photograph or written confirmation. He also questioned why it was that the notice was sent to the tenant again in July 2023 if they were not going to accept his selection of the lowest rent rate and the 1-year term.
12. Furthermore, WD pointed out that the submitted notice of rental increase differs markedly from the sample notice posted on the Residential Tenancies website. He argued that the recommended notices are relatively simple, but that the one issued by the landlord—offering 3 different options, and requiring that he return a form to a landlord a month prior to the effective increase date—is quite complicated and could be confusing to many tenants.

13. The tenant is seeking a determination of the validity of the notice of rental increase.

#### The Landlord's Position

14. DR stated that she did not know for certain who had delivered the notice of rental increase to the tenant in January 2023, but she testified that these notices are typically delivered by her building caretakers, and in this case that would have been RI.
15. RI stated that he did not recall if he had personally given the notice to the tenant or if he had posted it to the tenant's door. DR acknowledged that there is no proof that RI had delivered the notice to the tenant in January 2023 and she stated that there does not exist any written confirmation from the tenant that it was delivered in January 2023.

#### **Analysis**

16. For the purposes of this analysis, the relevant subsections of section 16 of the *Residential Tenancies Act, 2018* state:

##### ***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.*

*(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.*

and, additionally, section 34 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.*

17. As the landlord asserted that the tenant was served with this notice of rental increase in January 2023, she had the burden of proving that fact. It was DR's testimony that her building caretaker "would have" either given the notice to the tenant or posted it to his door, but she did not witness the delivery of the notice, and she testified that there was no documentary evidence that would corroborate that it was delivered. Although RI was supposedly the person who delivered the notice, he testified that he had no recollection of whether he had given it to the tenant personally or if he had posted it to the door. Given the paucity of that evidence, I conclude that the landlord has not established, on the balance of probabilities, that the notice was indeed given to the tenant in January 2023. If the notice, then, was only provided to the tenant in July 2023, it does not meet the 6 month requirement set out in subsection 16.(3)(b) and it is therefore not valid.
18. But there are other problems with the notice. Firstly, the notice is not signed by the landlord, as required by subsection 16.(4)(a). Secondly, the notice states that the landlord is implementing a rental increase of \$10.00. But if the tenant opts for a month-to-month term, or a fixed-term of 6 months, the rent would increase to \$1060.00 and \$1010.00, respectively. But the notice does not state, which is required by 16.(4)(c), what the rent would be increasing by in those instances (\$110.00 and \$60.00, respectively).
19. Additionally, as required by section 34.(a), a notice of rental increase must be in the form prescribed by the minister, and that form is available through this section's website (<https://www.gov.nl.ca/dgsnl/files/landlord-notice-to-increase-rent-fillable.pdf>).
20. Section 22 of the *Interpretation Act* states:

## **Implied provisions**

### **22. In an Act or regulation**

...

*(f) where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used;*

I am of the view that the deviations between the prescribed form and the landlord's notice do affect the substance of the form and make it invalid. I outlined 2 of those deviations in paragraph 18, above. But furthermore, in the landlord's notice, the tenant is being offered a choice of 3 different rent rates and that choice is tied to the choice of a renewal term. Nothing in the prescribed form deals with the renewal of a lease, and I find that that difference does affect the substance of the form.

21. For all of these reasons, the landlord's notice of rental increase is not valid.

### **Decision**

22. The landlord's notice of rental increase, dated 23 January 2023, is not a valid notice.

23. The tenant's rent remains at \$950.00 per month.

### **Issue 2: Validity of Termination Notice**

#### **Relevant Submissions**

##### The Landlord's Position

24. With his application, the tenant had also submitted a copy of a termination notice, which DR stated was posted to the tenant's door on 25 July 2023. That notice was issued under section 24 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 01 August 2023.

25. DR stated that that notice was issued to the tenant because of a physical altercation which had taken place between the tenant and her caretaker, RI. RI stated that on 21 July 2023 he was removing garbage from the complex when he was approached by the tenant, who he claimed was cursing and swearing at him. When he got close, RI testified that the tenant had pounded on his chest, twice, with his fist.

26. After that incident, RI filed a report with the landlord, and DR stated that that report was submitted to her head office, who then instructed her to issue this termination notice. RI stated that DR had told him that if a similar event ever were to happen, he should contact the police.

27. RI claimed that because of the physical assault on him, his sternum bone was bruised and he had difficulty breathing afterwards. He also testified that he went to the hospital and he had an x-ray done, but no bones were broken.

28. DR stated that this was not the only disturbance that the tenant had caused at the rental unit. She stated that in May 2023, while the tenant was “under the influence”, he had also pulled the fire alarm because he believed another resident at the complex had suffered a medical emergency. She stated that the alarm was pulled late at night, and the residents at the complex evacuated the unit, thinking that it was on fire, causing them great distress.
29. RI claimed that firefighters and the police arrived on the scene after the alarm was pulled, and he claimed that the tenant “got in the face” of one of the firefighters and a female police officer. He also claimed that the tenant had gotten in his face as well when he was trying to reset the fire alarm.

### The Tenant’s Position

30. The tenant acknowledged that he had received this termination notice on 25 July 2023, but he questioned the validity of that notice.
31. With respect to the incident with the fire alarm, the tenant acknowledged that he had pulled that alarm, but he argued that he had only done so out of concern for the welfare of another tenant at the complex. The tenant stated that he would often conduct a medical check on another resident at the complex, C, and on this particular night, when he did his check, he mistakenly thought that C had stopped breathing. Thinking that C needed immediate medical attention, the tenant pulled the fire alarm. He claimed that in hindsight, it would have been more prudent to call 911, and it would not have caused such a disturbance, but he claimed that there was no malicious intent in pulling that alarm.
32. Regarding the altercation with RI, the tenant stated that this matter came about because he had been informed that RI had thrown away a piece of his furniture. He acknowledged that he was angry with RI, and that he had confronted him about the matter, and that he had called him an “arsehole”, but he denied that he had punched RI.
33. The tenant stated that when this confrontation occurred, there was a garbage bin between him and RI, and with his application the tenant had submitted photographs of a similar bin, and in these photographs, the width, length, and diagonal of the top of the bin are measured with a measuring tape. WD pointed out that, based on the position of the tenant and RI during this altercation, there was a distance of about 41 inches between them, and as the tenant’s arm is less than 30 inches long, there is no way that he could have struck RI.
34. WD also stated that there were other incidences between the tenant and RI, and he suggested that these instances suggest that RI had a particular problem with the tenant. On one occasion, the tenant stated that he was in the elevator with RI, and he had asked him about the purpose of some of the buttons in the elevator, and RI had told him that it was none of his business and that he only needed to press the numbered buttons for the floor he wished to go to. The

tenant stated that on another occasion, when he was playing cards with some other residents at the complex—an activity he frequently engaged in, and enjoyed—he was approached by RI and informed that he needed the landlord's permission to play cards.

35. WD also argued that the landlord had not properly investigated the incident before she had issued the termination notice. He pointed out that although she had received a complaint from RI and that an incident report was filled out, she ought to have done a more thorough investigation of the matter and she ought to have reached out to the tenant to get his side of the story. He also pointed out that no documentation was presented showing that it was the landlord's policy to issue a termination notice when they receive these sorts of complaints, or to show that they had a zero-tolerance policy for the sort of incident reported by RI.

## Analysis

36. Statutory condition 7, set out in section 10 of the *Residential Tenancies Act, 2018*, states:

### ***Statutory conditions***

**10.** (1) *Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:*

...

#### **7. Peaceful Enjoyment and Reasonable Privacy -**

(a) *The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.*

According to section 24:

### ***Notice where tenant contravenes peaceful enjoyment and reasonable privacy***

**24.** (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.*

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

*(a) be signed by the landlord;*

*(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*

*(c) be served in accordance with section 35.*

37. It is not disputed that the tenant and RI were involved in an altercation, and the tenant acknowledged that he was angry with RI and that he had cursed at him. The disagreement about this altercation concerns whether the tenant struck RI on the chest. On that matter, I preferred the testimony of RI. I found his testimony to be believable and consistent, and his recollection of that event was detailed and precise. I was also not persuaded that RI had any ulterior motive in reporting that incident to the landlord.
38. That sort of behaviour is antisocial and dangerous, and I find that it crosses the threshold of “unreasonable interference”. Caretakers and building superintendents should obviously not be required to work in an environment where they are subject to this sort of abuse and physical violence.
39. Given these findings, I agree with landlord that she was in a position, on 25 July 2023, to issue the tenant a termination notice under this section of the Act. As the notice was properly served, and as it meets all the other requirements outlined here, I find that it is valid.

### **Decision**

40. The termination notice issued to the tenant on 25 July 2023 is a valid notice.

15 September 2023

Date

  
John R. Cook  
Residential Tenancies Tribuna