

Residential Tenancies Tribunal

Application 2023-0971-NL &
2023-0977-NL

Decision 2023-0971-NL &
2023-0977-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was call at 2:00 PM on 22 November 2023 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as “tenant 1”, attended the hearing. [REDACTED] hereinafter referred to as “tenant 2”, did not attend the hearing. Tenant 1 did not call any witnesses.
3. The respondents, [REDACTED] hereinafter referred to as “landlord 1”, and [REDACTED] hereinafter referred to as “landlord 2”, attended the hearing. The landlords did not call any witnesses.

Preliminary Matters

4. Tenant 1 provided an affidavit (**Exhibit T # 1**) which confirmed landlord 1 was served electronically with notification of an Application for Dispute Resolution on 24 October 2023 at approximately 4:34 PM at [REDACTED] Tenant 1 provided an affidavit (**Exhibit T # 1**) which confirmed landlord 2 was served electronically with notification of an Application for Dispute Resolution on 24 October 2023 at approximately 3:47 PM.
5. Tenant 1 did not seek amendments to his application.
6. Tenant 2 was not present or represented at the hearing and I was unable to reach her by telephone [REDACTED] at the start of the hearing. Tenant 1 stated that tenant 2 was at her place of employment and unavailable on the date and time of the hearing. While the landlords had wished for tenant 2 to be present, all parties agreed to continue with the hearing in tenant 2’s absence.
7. Landlord 1 stated there was a verbal rental agreement which commenced in April 2022 with Tenant 1 and another tenant, who is no longer a tenant of [REDACTED] NL. Landlord 2 suggested in August 2023, tenant 2 moved into the rental premises with tenant 1. Landlord 1 suggested the monthly rental amount of

\$450.00 was due on the 1st of each month, which increased to \$650.00 after tenant 2 became an occupant in August 2023. This was a verbal agreement between the landlords and tenants to increase rent. There was no written agreement between the tenants and landlords about this rental increase. There was a security deposit collected on the rental agreement on 29 March 2022, in the amount of \$150.00 which the landlords were still in possession of on the date of the hearing. Landlord 1 stated both tenant 1 and tenant 2 remain in the rental on 22 November 2023.

8. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

9. The tenants are seeking the following:
 - Validity of termination notice; &
 - Refund of Rent of \$150.00 paid for September 2023

The Landlords are seeking the following:

- Vacant possession
- Rental arrears in the amount of \$300.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018.
11. Also relevant and considered in this case are sections 16, 19, 20, 34, 35 and 42 of *Residential Tenancies Act*, 2018, as well as Policy 02-002 and 07-001 of the *Residential Tenancies Program Policy*.

Issue 1: Validity of Termination Notices

Tenant Position

12. Tenant 1 stated that there is a verbal monthly rental agreement established with the landlords and he has occupied the rental premises since April 2022. Tenant 1 further stated that there was a security deposit in the amount of \$150.00 paid and monthly rent of \$450.00 was due at the first of each month. Tenant 1 suggested when he initially took occupancy of [REDACTED] NL, he had another roommate and

in August 2023, following his first roommate leaving, tenant 2 took occupancy of the rental and the landlords were fully aware of tenant 2's occupancy.

13. Tenant 1 offered testimony that after tenant 2 moved into the rental, the landlord's requested that the monthly rental amount of \$450.00 would increase effective 1 September 2023 to \$650.00, which he initially agreed to pay. He stated the landlords had requested an increase in rent in the amount of \$50.00 per week while tenant 2 was residing in the rental. He also advised he and tenant 2 paid \$650.00 for September's rent. However, after re-consideration of rental increase, questioned if appropriate requirements of a rental increase, as defined in the *Act*, were followed by the landlords.
14. Tenant 1 stated for October and November 2023, he paid \$500.00. Following this, tenant 1 suggested he was issued three separate notices to terminate.

Landlords position

15. The landlords did not dispute the testimony offered by tenant 1 aside from his claim that the rental increase was inappropriate. Landlord 2 confirmed there was a verbal agreement in place and suggested, it was "unfortunate" there was not a written agreement in place for the rental. The landlords both offered testimony that they believed an additional \$200.00 rent per month was appropriate. They had been initially informed by tenant 1 that tenant 2 would only be staying at the rental for a brief period of time.
16. The landlords did offer evidence of two separate notices to terminate which were offered to the tenants. The first Landlord's Notice to Terminate- Standard (**Exhibit L # 1**) was issued to the tenants on 5 October 2023 under section 18, with a request to be out by 31 January 2024. Following this notice, the landlords offered into evidence, a notice under section 19, issued to the tenants on 12 October 2023, requesting the tenants to be out of the rental by 31 October 2023 (**Exhibit L # 2**). A third notice was offered into evidence by the landlords under section 20 of the *Residential Tenancies Act*, 2018, which was issued to both tenants on 14 November 2023 requesting the tenants to be out of the rental by 31 December 2023 (**Exhibit L # 3**).

Analysis

17. Section 34 of the *Residential Tenancies Act*, 2018, offers *Requirements for notices*, and states, "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.

18. The notices issued under section 20 and section 18(2)(b) contain the name and address of the recipient, the appropriate address of the residential premises and each clearly notes the section under the *Act* which the notices are issued.
19. The question is around the issue of multiple notices to terminate being issued by the same individual. This situation is explained in Policy 07-001, **Termination by More than 1 Notice**, which states:

“If a termination notice is already in place and a second notice is issued by either party whereby the termination date is earlier than that specified in the first notice, then so long as this second notice is valid, the tenant is required to vacate on the date specified in the second notice. The party receiving this second notice is no longer required to abide by the termination date set out in the first notice and the termination date in the second notice is the date that the tenant is required to vacate.”

Termination Notice # 1

20. In relation to the termination notice the landlords issued to the tenants under section 18 on 5 October 2023 requesting the tenants to be out by 31 January 2024 (**Exhibit L # 1**) as indicated herein paragraph 17, there were no adjudication in the matter as this termination date is for the future of 31 January 2024.

Termination Notice # 2

21. In relation to the second termination notice the landlords issued to the tenants under section 19 on 12 October 2023 requesting the tenants to be out by 31 October 2023 (**Exhibit L # 2**). The landlords offered evidence of a rental ledger which reflects the tenants paid \$650.00 for September 2023 followed by \$500.00 for October 2023 (**Exhibit L # 4**).
22. Both the landlords and tenant 1 offered testimony that the issue of a rental increase was discussed between both parties, but the amount was disputed. The landlords offered testimony and evidence of the changing of monthly rental amounts since tenant 1 had gained occupancy in April 2022 (**Exhibit L # 5**). As detailed within that piece of evidence, “The original agreement was with his then girlfriend. It was agreed at that time that their rent would be \$500.00. That relationship ended in July 2023. In August (2023), [REDACTED] defaulted to a single person in the room and the landlords and tenant1 had a verbal agreement to pay \$450.00 per month. When confronted about the new tenant, [REDACTED] (tenant 2), he said she was looking for a new apartment and would not be staying. We came to an agreement of \$200.00 a month. [REDACTED] paid the \$650.00 for September but has refused to pay it for October”.

Analysis

23. Upon review of this notice to terminate, I see from the rental ledger of the landlords that the tenants had paid rent in the amounts of \$650.00 for September 2023, followed by \$500.00 for October 2023. Tenant 1 also testified he paid \$500.00 monthly rent for November 2023. The question I have regarding the rental increase is if the appropriate

timeframes were provided to the tenants? As defined in Section 16 of the *Residential Tenancies Act, 2018*:

Rental Increase

16(3) *Where the landlord increased 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 a fixed term.

24. The landlords and tenant 1 both agreed in August 2023, there were verbal discussions about a potential rental increase which the landlords were seeking, to begin in September 2023. Section 16 (3)(b) of the *Landlord Tenancies Act, 2018* clearly defines the required timeframe of a rental increase for a month-to-month tenancy, is six clear months. The landlords did not issue the tenants written notice of the proposed rental increase, nor was there a date of six months from the request of start of that increase. The rental increase was not in accordance with the Act, and tenant 1 did pay the previously agreed upon rental amount under section 19. I find that the termination notice issued under section 19 of the *Residential Tenancies Act, 2018* fails based on the evidence.
25. Based on the evidence and testimony provided by both the applicants and respondent, I find the termination notice presented by the landlords in relation to non-payment of rent to be invalid as six clear months of notice of a rental increase was not provided to the tenants.

Termination Notice # 3

26. The landlords issued the tenants a third notice under section 20 of the *Residential Tenancies Act, 2018* on 14 November 2023 requesting the tenants to be out of the rental by 31 December 2023 (**Exhibit L # 3**). This termination notice was in relation to an alleged breach of material term by the tenants of their failure to pay utility bill for furnace oil.
27. The landlords offered evidence of a ledger (**Exhibit L # 4**) which indicates tenant 1's furnace oil payments between 9 April 2022 and October 2023. As indicated within that piece of evidence, tenant 1 paid furnace oil payments as follows:

Date	Transaction	Amount Due	Paid	Balance
22 April 2022	April oil	\$200.00	\$200.00	\$0
5 Nov. 2022	Nov. oil	\$200.00	\$200.00	\$0
20 Dec. 2022	Dec. oil	\$200.00	\$200.00	\$0
9 Feb. 2023	Feb. oil	\$320.00	\$320.00	\$0
10 Mar. 2023	Mar. oil	\$200.00	\$200.00	\$0
Oct. 2023	Oct. oil	\$214.00	\$0	\$214

28. The landlords also stated the tenants had not paid a furnace oil payment for October 2023. The tenants paid the landlords who paid the utility company. The landlords testified in the hearing that it was, "easier for us to pay the oil bill than the tenants as we would have to bleed the line when the oil ran out before".
29. The tenant expressed his concerns with the heating of the property due to it requiring repair work and insulation. As well, the tenant expressed concerns with the inconsistencies in when these payments were due, and expressed his frustration with his lack of control over the use of oil heat for the rental property. Furthermore, he felt that as he was responsible for utilities, he should have input when and how this utility is used.

Analysis

30. The landlords issued a notice under section 20 of the *Act*, in relation to the tenant's alleged material breach of the Rental Agreement. Section 20(2) clearly outlines the requirements associated with material breaches of the tenant.
20 (2) *Notwithstanding subsection 18(2) and paragraph 18(3)(b) , where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises*
31. Section 20(2) of the *Residential Tenancies Act*, 2018, requires landlords to provide tenants written notice of the contravention of material breach so as to afford tenants the opportunity to rectify the situation.
33. There was no evidence presented to demonstrate that the landlord met the obligations of section 20(2), and provided a written notice of contravention of a material term of the rental agreement, and afforded the tenants the opportunity to rectify the situation. As such, I find the third termination notice presented by the landlords in relation to material breach of the rental agreement to be invalid.

Decision

34. The notices issued by the landlords are not valid. The request for vacant possession and rental arrears does not succeed.

Issue 2: Refund of Rent- \$150.00

Tenant position

35. Tenant 1 is seeking a refund of rent for September 2023 in the amount of \$150.00. He testified that for September 2023, monthly rent of \$650.00 was paid, along with \$500.00 for October and both were seeking the \$150.00 excess rental payment.

Landlords position

36. Both landlords offered evidence (**Exhibit L # 4**) that the tenants had paid rent in the amount of \$650.00 for September and \$500.00 for October 2023. They did not dispute that the tenants paid the amount indicated for September 2023.

Analysis

37. *Residential Tenancies Program Policy Number 13-002, Rental Rebate*, offers clear direction as to how this issue is reviewed. As defined in Policy 13-002, "A tenant who wishes to file a claim for rental rebate should proceed as required in Section 9-7 of this manual- Requirements for Application".
38. As indicated within paragraph 4 herein, tenant 1 proceeded with an Application for Dispute Resolution (**Exhibit T # 1**) which meets the requirements as defined and set forth in the *Residential Tenancies Act, 2018*.
39. Tenant 1s application is relevant to Policy Number 13-002. As defined in Policy Number 13-002 of the *Residential Tenancies Program, Policy and Procedure Guide*, "a Tenant may be entitled to a rental rebate where a rental increases has occurred other than in a manner permitted un the Act". The evidence offered and testimony provided does not support the tenants are in rental arrears. As previously noted within, the landlords rental arrears did not succeed, therefore I find the tenants claim for rental rebate in the amount of \$150.00 succeeds.

Decision

40. The tenants claim for rental rebate in the amount of \$150.00 succeeds.

Issue 3: Hearing expenses reimbursement \$20.00

41. Both parties submitted their receipts (**T # 3 and L # 7**) for the application fee. Pursuant to policy 12. 01, as the tenant's claim has been successful, he is entitled to reimbursement of that cost from the landlords.

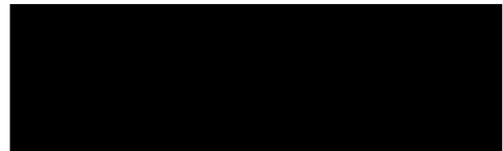
Summary of Decision

- 42. The termination notices under section 19 and 20 issued to the tenants are not valid notices.
- 43. The landlords shall pay to the tenants **\$170.00**, as follows:

- Rent.....\$150.00
- Hearing expenses.....\$20.00
- Total.....**\$170.00**

16 January 2024

Date



Michael J. Reddy
Residential Tenancies Office