

Residential Tenancies Tribunal

Application #2024-0192-NL and #2024-0195-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 17-April-2024.
2. The applicants of the initial claim, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, attended via teleconference.
3. The respondents of the initial claim, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, also attended via teleconference.

Preliminary Issues

4. The landlords had initially requested an order of vacant possession. However, the tenants had vacated the property by the time of the hearing, so this was no longer necessary.
5. A number of misunderstandings and unfortunate incidents were discussed at the hearing. I have chosen not to mention any such incidents which I do not believe are relevant to this decision.

Issues before the Tribunal

6. Should the tenants' claim for a refund of rent succeed?
7. Should the landlords' claim for overdue rent succeed?
8. Should the landlords' claim for damages succeed?

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (The Act).

Issue 1: Refund of Rent

Tenants' Position

10. The tenants testified that they had a rental agreement with the landlords with a monthly rent of \$1400. They said the landlords increased the rent illegally without proper notice in September of 2022 to \$1500 a month. They say they were advised of this via a text message in the previous August. They testified that in December of 2022 they were notified again via text that next month the rent would go up to \$1775. The next increase was for August 2023 and set rent at \$1900. They could not recall exactly when they received the text notifying them of this, but the text messages submitted by the landlord (LL#2) show on page 13 that it was 16-July-2023. Finally, in December 2023 rent was increased to \$2100, and they were notified of this via a text message the previous November.

Landlords' Position

11. The landlord said they submitted a formal notice to increase rent from \$1400 to \$1500 on 30-May-2022 . They admitted they were not aware of the provision of the *Act* which requires more than 1 months' notice. They testified that they were hoping to sell the home, ideally to the tenants. Parties agree that they had all shared this intent. The landlords testified that the rental increases were to balance their finances so that they would not have to sell the home before the tenants were financially able to purchase it. As this tribunal is aware, mortgage rates have significantly spiked in the last few years. The landlords effectively argue that the tenants agreed to the rental increases.

Analysis

12. S. 16 of the *Act* reads 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.

(Emphasis mine):

13. S. 16(1) specifically states that the restrictions on rental increases applies notwithstanding any agreement, declaration, waiver, or statement to the contrary. That means that a rental increase is not exempted from s. 16 by the consent of the tenants. The only exception to this is provided by subsection (7), which allows a landlord and tenant to jointly waive the notice requirement in subsection (3) where the increase is due to the provision of a service, facility, privilege, or benefit that was not previously provided under the rental agreement. Subsection (7) does not apply in this case as there was no suggestion that the rental increase was due to the provision of a new service, facility, privilege, or benefit. Indeed, it was specifically noted that the increase was to compensate for rising mortgage prices.
14. Maintaining the possibility that the tenants would be able to purchase the property does not constitute a new benefit under s. (7). Firstly, because it is explicitly not a new benefit, but the continuance of an existing one. Secondly, because it is not a material benefit but

a mere potential option, making it akin to an agreement to agree, which is not enforceable in law.

15. As the tenants' consent would not change the outcome, I decline to make a finding on whether or not the tenants consented to the rental increase.
16. Based upon the agreed facts, there was an illegal increase in rent and the tenants must be compensated. S. 16(3)(b) requires that in a month-to-month lease such as this one, the tenants be given 6 months' notice. 6 months from August 2022 would mean that the \$1500 increase could only become effective for March 2023. S. 16(1) requires that no more than one rental increase can occur in a 12-month period. Another increase could only therefore become effective as of March 2024. The \$2100 monthly rent could not be effective at this time as it was only mentioned in November 2023, providing less than 6 months notice. The \$1900 monthly rent became the effective rent as of March 2024.
17. The tenants overpaid rent by \$100 for the months of September, October, November, and December of 2022. They overpaid rent by \$375 for the months of January and February of 2023. They overpaid rent by \$275 for the months of March, April, May, June, and July of 2023. They overpaid rent by \$400 for the months of August, September, October, and November 2023. They overpaid rent by \$600 for the month of December in 2023 and the month of January 2024. They acknowledged they had been \$100 "short" of the \$2100/month rent in February 2023, so they overpaid by \$500 in that month. The tenants agreed that they did not pay rent in March or April.
18. Overall, the tenants overpaid rent by \$5825.

Issue 2: Overdue Rent

19. The tenants acknowledged they paid only \$2000 in rent in February 2023 and did not pay rent for March 2023. They did not vacate the premises until 2-April-2024. As noted above, the \$1900 rent would have been effective for this date.
20. In order to calculate rent for part months, the correct formula is to determine a daily rent by multiplying the monthly rent by 12 months and dividing by the 366 days of this year. In this case, the formula is $\$1900/\text{month} \times (12 \text{ months}/366 \text{ days}) = \sim \$62.30/\text{day}$. Multiplying this daily rent formula by the 2 days the tenants occupied the premises in April yields a total rent for that month of \$124.59.
21. The tenants owed the landlord \$2024.59 for the months of March and April.

Issue 3: Damages

22. The landlords claim for damages in the amount of \$207.00 for a broken window and the tenants acknowledge the claim in full.

Decision

23. Subtracting the \$2024.59 rent owed for the months of March and April from the overpayment total of \$5825 shows that the landlords owe the tenants \$3800.41 in a rent refund.

24. The tenants owe the landlords \$207.00 in damages.

Summary of Decision

25. The landlords shall pay to the tenants \$3593.41 as follows:

Rent Refund.....	\$3800.41
Less Damages.....	-(\$207.00)
Total.....	\$3593.41

19-June-2024
Date


Seren Cahill
Residential Tenancies Office