

Residential Tenancies Tribunal

Application 2024-0521-NL & 2024-0522-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 22-July-2024 at 1:51 pm.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended in person.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, also attended in person.

Preliminary Matters

4. The landlords acknowledged they received notice of this hearing more than ten days before the hearing date. The tenant acknowledged she received notice of the hearing on the counterclaim more than ten days before the hearing date.

Issues before the Tribunal

5. Should the tenant's claim for a refund of rent succeed?
6. Should the tenant's claim for compensation for inconvenience succeed?
7. Should the landlord's claim for unpaid rent succeed?
8. Are the termination notices dated 1-June-2024 and 10-June-2024 valid?
9. Should the landlord's claim for an order of vacant possession succeed?

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.
11. Also considered and referred to in this decision are sections 18(2), 18(9), 19, and 34 of the *Act*, reproduced here:

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

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

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

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

...

(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.

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(4) 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.

(5) Notwithstanding subsection (1), where a tenant suffers a loss of income due to loss of employment or a reduction in work hours as a result of the Public Health Emergency declared in the province on March 18, 2020, the period in which the tenant is required to vacate a residential premises under subsection (1) is extended for a period of not less than 30 days after the notice is served on the tenant.

(6) A tenant referred to in subsection (5) shall provide to the landlord proof of loss of income in the form of

(a) written or electronic documentation from the tenant's employer confirming the loss of employment or reduction in work hours; or

(b) a statutory declaration of the tenant.

(7) Notwithstanding subsection (5), the Lieutenant-Governor in Council may, by order, extend the period referred to in subsection (5).

(8) An order made under subsection (7) is subordinate legislation for the purposes of the *Statutes and Subordinate Legislation Act* .

(9) The Crown is not liable for damages caused to a person as a result of a time period extended under the authority of subsection (5) or (7).

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.

Issue 1: Refund of Rent

Tenant's Position

12. The tenant claims for a refund of rent in the amount of \$8200. She testified that the landlords raised the rent illegally, twice, and she seeks the difference between what she has paid and what she would have paid if she had continued to pay at the original rate of

rent. She testified that the initial rent was set at \$800 a month. She says that on 15-September-2021, her late husband received a call from one of the landlords notifying them verbally that the rent would be raised to \$1200 effective for 1-October-2021. She testified that in May 2023 the rent was once again raised by a verbal notice over the phone for the next month, this time to \$1400 a month.

Landlord's Position

13. The landlords testified that they served the tenants a notice of termination (T#1) under s. 18 of the *Act* on 1-September-2021. They say they informed the tenants shortly thereafter that they felt they needed to sell the building containing the residential premises. They say the tenant then offered two days later to pay an extra \$200 rent to if it would allow them to retain the house. They say after some consideration they agreed to this on 20-September-2021. They say they believe that the tenant was not living at the property in May 2023, when she says she was notified of the rental increase. They testify that in March 2023, they once again had the realization that they needed to sell the property, and that the tenant's late husband once again offered to pay an additional \$200 a month to avoid this. According to their testimony they accepted some time after this.

Analysis

14. The narrative accounts provided by the parties differ significantly. A number of arguments of various strength were advanced by both sides in favor of their version of events.
15. The tenant's testimony was straightforward. She was responsive to questions. She did not equivocate. Her narrative was generally plausible. There was one significant point that is difficult to reconcile. She testified that the landlords issued an illegal verbal notice of rental increase on 15-September-2021, which is two weeks after they issued T#1, a termination notice. She indicated this was used as leverage to force the tenant and her late husband to comply with the notice of rental increase issued two weeks later. This seems illogical. The tenant did not offer an explanation of why the landlords might have proceeded that way.
16. The landlords' testimony was straightforward. They were responsive to questions. They provided extensive documentation to support their account. Their narrative was plausible. I found no internal consistencies, nor any inconsistencies with evidence other than the tenant's testimony.
17. Considering the evidence in its totality, I find on a balance of probabilities that the landlords' recollection of the events is accurate.
18. This does not end the analysis. The landlords say, and I have accepted, that the tenants proposed and agreed to the rental increase. S. 16(1-3) of the *Act* reads as follows (emphasis mine):

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.

19. As emphasized above, the restrictions imposed by s. 16(1) exist notwithstanding a waiver or statement to the contrary. S. 16(1) therefore holds that a tenant cannot consent to an increase of rent more than once in a 12-month period where a residential premises is rented from month-to-month. S. 16(3) is the provision which requires 6 months notice be given prior to a rental increase. It does not contain similar language explicitly preventing the tenants from waiving their right to notice. However, the absence of a provision explicitly stating that the parties cannot by agreement opt out of a provision of a statute does not necessarily mean the option to opt out exists. Rather, there must be a provision enabling parties to circumvent the provision. For instance, see s. 18(5), which explicitly allows tenants and landlords to agree to set aside certain notice requirements. Further, s. 16(7) specifically allows a landlord and tenant to agree in writing to an increase in rent without notice where the increase is due to the provision of a service, facility, privilege or benefit that was not previously provided under the rental

agreement. In the present case there was no evidence of an agreement in writing nor of a provision of a service, facility, privilege or benefit that was not previously provided under the rental agreement. I therefore conclude that the tenant cannot waive their right to notice under s. 16(3).

20. I have concluded that, notwithstanding the fact that the rental increase was the tenants' proposal, it was an illegal increase contrary to the *Act*.
21. But for the lack of notice, the tenant would have paid the lower rates of rent for 6 additional months each. That is, they would have paid the \$1000 rate rather than the \$1200 rate for the months of October 2021-March 2022, and the \$1200 rate rather than the \$1400 rate for the months of January 2023 to June 2023. This represents a difference of \$2400.00.
22. The tenant's claim for a refund of rent succeeds in the amount of \$2400.00.

Issue 2: Compensation for Inconvenience

Tenant's Position

23. The tenant claims \$2800 in compensation for inconvenience, representing \$100 per month for each month during which she says she was unable to use the basement of the building as it had been damaged by a flood in January 2022 and never repaired. She testified that her son was living in the basement for an extended period but the flood made this impossible. She says that the basement had been included as part of the rental agreement.

Landlord's Position

24. The landlords submit that the basement was never part of the rental agreement. They also testified that they repaired the basement to the best of their ability and provided evidence of some of their work done. Further, they contest the tenant's claim that her son lived in the basement. They said they never met nor knew of the tenant's son.

Analysis

25. The landlords questioned the truthfulness of the tenant's assertion that her son resided at the premises. The tenant responded to the effect that the landlords wouldn't have any direct knowledge because they never visited the property. The tenant did not submit any evidence outside of her own testimony to support the statement that her son lived there.
26. Considering the evidence in its totality, I find on a balance of probabilities that the basement portion of the premises were not included as part of the residential premises. I therefore need not consider whether the repairs were affected properly.
27. The tenant's claim for compensation for inconvenience fails.

Issue 3: Unpaid Rent

28. The landlords have claimed for unpaid rent in the amount of \$1200. The parties agree that the tenant paid \$1000 rent for the months of May, June, and July, which she asserted is the appropriate amount of rent.
29. The tenant owes \$400 for each of the months of May and June. However, this tribunal does not consider future rent. It only grants rent up to the date of the hearing. A daily rate must therefore be calculated to determine the amount owing, if any, for the month of July. The correct formula for determining the daily rate is found by multiplying the monthly rent by the 12 months of the year and dividing by the number of days in this year. In this case, $\$1400/\text{month} \times (12 \text{ months}/366 \text{ days}) = \$45.90/\text{day}$. Multiplying this by the 22 days which had begun by the date of the hearing results in a total of \$1009.84. As \$1000 has been paid for the month of July, \$9.84 remains owing. For clarity, this does not affect the tenant's liability for the remainder of the month's rent should she remain in the premises after the hearing date.
30. The tenant's payments were short \$809.84 (at the time of the hearing) for the months of May-July.
31. I determined in Issue 1, above, that the tenant has previously overpaid rent by \$2400. Applying these sums against each other results in the tenant having overpaid rent by \$1590.16 in total.
32. The tenant does not owe any rent at the time of the hearing.

Issue 4: Termination Notice

Tenant's Position

33. The tenant produced two termination notices she contests the validity of; T#2 and T#3. T#3 is a notice for termination for nonpayment of rent, and T#2 is a notice for termination without cause. The tenant submits that T#2 is invalid as she has paid rent, and T#3 is invalid as it is retaliatory.

Landlord's Position

34. The landlords submit that both notices are valid. They deny that any notice was retaliatory and insist that their desire to terminate the rental agreement is termination based on their desire to sell the property and their personal financial circumstances.

Analysis

35. To be valid, a termination notice must comply with all relevant sections of the *Act*.
36. T#2 and T#3 are both termination notices in writing in the forms prescribed by the minister. They both contain the name and address of the recipient. They state the residential premises they regard. T#2 identifies itself as being given under s. 18 of the *Act*, and T#3 identifies itself as being given under s. 19. Both therefore comply with s. 34 of the *Act*.

37. T#3 is signed was signed by the landlords. It states the date on which the rental agreement is meant to terminate. It was served personally in accordance with s. 35(2)(a) of the *Act*. It therefore complies with s. 19(2) of the *Act*.
38. T#3 was issued on 10-June-2024. On this date, the tenant's rent had been overdue by more than five days. T#3 gives a move out date of 21-June-2024, not less than 10 days after it was issued. It therefore complies with s. 19(1)(b) of the *Act*.
39. I have already determined that no rent was owed at the time T#3 was issued. Therefore, T#3 is invalid.
40. T#2 was signed by the landlords who provided it. It was given on 1-June-2024, the first day of a rental period. It states the date on which the rental agreement is to terminate as 31-August-2024, which is the last day of a rental period. It was served personally on the tenant in accordance with s. 35(2)(a) of the *Act*. It therefore complies with s. 18(9).
41. T#2 provides three full months' notice. It complies with all relevant provisions of the *Act* and is therefore valid.

Issue 5: Vacant Possession

42. T#2 is a valid termination notice. It gives a move out date of 31-August-2024. That date has not yet passed.
43. The landlords' application for an order of vacant possession fails.

Decision

44. The tenant's claim for a refund of rent succeeds.
45. The tenant's claim for compensation for inconvenience fails.
46. The landlord's claim for unpaid rent fails.
47. The termination notice dated 21-June-2024 is invalid.
48. The termination notice dated 1-June-2024 is valid.
49. The landlord's application for an order of vacant possession fails.

Summary of Decision

- 50. The landlords shall pay to the tenant \$1590.16 in a refund of rent.
- 51. The termination notice dated 21-June-2024 is invalid.
- 52. The termination notice dated 1-June-2024 is valid.

16-August-2024

Date


Seren Cahill
Residential Tenancies Office