

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

CITATION: 2026 NBKB 081

BETWEEN:

GAUDET PROPERTIES LTD.

Applicant,

- and -

TINA HENDERSON,

Respondent.

DECISION

BEFORE: Justice Darrell J. Stephenson

AT: Saint John, N.B.

DATE OF HEARING: September 5, 2025, and March 4, 2026

DATE OF DECISION: April 10, 2026

COUNSEL:

Kelly T. VanBuskirk, K.C. and Isaac Corey, on behalf of Gaudet Properties Ltd.

Tina Henderson, per se (not in attendance)

Madison Pelham and Karine Arsenault, on behalf of the *Amicus Curiae* Office of the Attorney-General

Stephenson, J.

INTRODUCTION

[1] The Applicant filed a Notice of Application on April 8, 2025 challenging an April 2, 2025 decision (the “**Decision**”) of a Residential Tenancies Officer (Marcel Day) (the “**RTO**”) pursuant to the provisions of the ***Residential Tenancies Act*** (New Brunswick) (the “**Act**”).

[2] The matter initially came before the Court on September 5, 2025 at which time the Order set out in Schedule “A” was put in place (the “**October Order**”) and the hearing of the Application adjourned to March 4, 2026. An Amended Notice of Application was filed on October 1, 2025 and, consistent with the October Order, briefs were thereafter filed on behalf of the Applicant and the Office of the Attorney-General, acting as *Amicus Curiae*.

[3] Under the Decision, the RTO held that a Notice of Termination served by the Applicant upon the Respondent on January 31, 2025 (the “**Notice**”) was invalid pursuant to Section 24.1(1) of the *Act* and, in consequence thereof, directed that “the tenancy shall continue under the terms of the existing tenancy agreement”. Under the Application, the Applicant challenged the Decision on various grounds including lack of procedural fairness, lack of jurisdiction and error of law. The Applicant abandoned its procedural fairness argument at the hearing. The Applicant’s characterization of its objections to the Decision can be summarized as follows:

- i. the RTO had no jurisdiction to invalidate the Notice pursuant to Section 24.1(1);
- ii. the RTO improperly applied the analysis of application under Section 24.1(1) in circumstances where the issue before him fell to be determined on the basis of Section 24.12(1); and

- iii. the RTO conflated the differing principles of application under Sections 24.1(1) and 24.12(1) in both his dealings with the Applicant and the Decision such that the Applicant was deprived of a meaningful opportunity to respond (participate in the process) and the Decision is incorrect and cannot stand at law.

FACTS

[4] The facts are not in dispute. The Applicant is the owner of the building situate at 190 Millenium Drive in Quispamsis, NB. The Respondent resides in unit 201 in that building. On January 13, 2025 the Respondent contacted the Tenant and Landlord Relations Office (the “**TLRO**”) for assistance advising that she had been informed under a notice dating from August 2024 that her rent would be increasing 12.5% effective March 1, 2026.

[5] The communication from the Respondent to the TLRO was as follows:

Received a letter Dated August 1st, 2024 stating my rent was going to be increased to \$1,750.00 from \$1,550.00! This should only be a 3% increase, Not 12.5% increase! Pls help!!

[6] The January 14, 2025 response from the TLRO was as follows:

Hello,

If you received the notice in August, you are too late to apply for a revision of rent increase (the window is 60 days), however, any rent increases that take effect after February 1st, will be automatically capped at 3%. If your landlord withdraws more than that, you can apply for assistance.

(this was in reference to rate cap provisions incorporated into the *Act* by way of amending legislation that came into force on December 13, 2024)

[7] The Respondent shared this information with Mr. Robert Gaudet (the principal of the Applicant) by text on January 14, 2025. Mr. Gaudet responded the same day with a voicemail as follows:

Hi Tina. It's Bob Gaudet here. I just got your text. Yeah we're aware of what the government has said. However, we're not on the same page considering the law at the time when we gave the increase was ah much different than the law in February of 2025 so we're going with the law at the time and ah we're definitely not on board with the 3%. It will be the increase that we asked for. And ah people had 60 days to appeal it, they didn't. So we've actually consulted with a lawyer if need be, we'll just take people to court. You can definitely get back to me at ah 506-653-7006 if you want any more clarification on where we stand, but ah we cannot operate those properties on only a 3% increase, nor will we. Um that being said, again, you can reach me at the number that I just left you.

(this voicemail was recorded by the Respondent and later provided to the RTO who considered same for purposes of the Decision)

[8] On January 22, 2025 the Respondent corresponded again with the TLRO reporting the above communication from Mr. Gaudet and requesting assistance from the TLRO regarding the purported rent increase. The response from the TLRO on the same day asked the Respondent to fill out an application for assistance and advised "we will need the notice of increase". The application for assistance was received on January 22, 2025 and assigned a file number, and the Respondent was again advised that an actual notice of rent increase was required before the TLRO could proceed with a review of same. This information was not provided and on January 27, 2025 the TLRO closed its file. There is no evidence in the file of any notice of rent increase being acted upon. We have only the Respondent's communication with the TLRO (paragraph 5) and Mr. Gaudet's voicemail (paragraph 7) regarding this subject matter.

[9] On January 31, 2025 the Respondent received the Notice from the Applicant advising that the Respondent's tenancy would be terminated effective February 28, 2025 because "the landlord or their immediate family intend to live in the building". The

Respondent filed an application for assistance with the TLRO on the same date and the following communication was forwarded by an Information Officer for the TLRO to the Applicant on February 21, 2025:

On January 31, 2025 the above-noted Tenant filed an Application for Assistance with the Tenant and Landlord Relations Office. The Tenant seeks a review of a Notice of Termination that was served on to them on January 31, 2025, to be effective February 28, 2025. A copy of the Notice of Termination is attached to this correspondence.

The Tenant(s) have requested that our office examine the notice of termination to determine the reason for the termination and alleges that the notice was served on to them as retaliation for having filed a complaint against the Landlord.

Subsection 24.1(1) and 24.12(1) of *The Residential Tenancies Act* (hereinafter the 'Act') is as follows:

24.1(1) Where a tenant makes a complaint against a landlord a notice of termination of the tenancy served by the landlord within the period beginning the day on which the complaint was made and ending one year after that day is not valid if

- (a) the tenant advised a residential tenancies officer in writing within 15 days after the receipt of the notice that the tenant intends to contest the notice, and
- (b) the landlord does not satisfy the residential tenancies officer that he did not serve the notice of termination because the tenant made the complaint.

24.12(1) Subject to section 24.13, a landlord shall not serve a notice of termination of a tenancy unless

- (a) the landlord intends in good faith that the premises will be occupied by landlord, the landlord's spouse, a child of the landlord, a parent of the landlord or a parent of the landlord's spouse.
- (b) the premises occupied by the tenant will be used other than as residential premises,
- (c) the premises will be renovated to such an extent that vacant possession is necessary to perform the renovation, or
- (d) the tenancy arises out of an employment relationship between the tenant and the landlord in which the employment relates to

the maintenance or management of the premises, or both, and the employment relationship is terminated.

The Tenant(s) has/have filed their Application for Assistance within fifteen (15) days of receiving the Notice of Termination thereby satisfying subsection 24.1(1)(a) of the Act. As per subsection 24.1(1)(b) of the Act, the onus is on you to satisfy the Residential Tenancies Officer that the Notice of Termination that was served on the Tenant(s) was not due to a complaint that has been raised by the Tenant(s).

Please provide the undersigned with a copy of any signed lease agreement and any other evidence (such as but not limited to: the reason(s) you served a Notice of Termination to the tenant(s)) with regard to this matter **by February 26, 2025**. Please submit the requested information preferably via email to Nadia.roussel@gnb.ca or renting@gnb.ca quoting your file number in the subject line. You may also submit your evidence by fax at the number below or by submitting it in person to any Service New Brunswick locations.

Please be advised should nothing is received from you by the date mentioned above, this matter will be assigned to a Residential Tenancies Officer who will render a decision in compliance with the Act which may result in the Notice of Termination being set aside. Alternatively, should you wish to withdraw/cancel the Notice of Termination you served on to your tenant(s), please confirm said intention in writing with this office.

Should you have any questions regarding this matter please do not hesitate to contact the undersigned at 506-253-2722 Or 1-888-762-8600 quoting our file number.

[10] Following the appointment of the RTO to investigate the Respondent's application for assistance the following three emails were forwarded by the RTO to the Applicant and the Respondent on February 25, 2025:

Tina,

Further to my voice mail to you today. I am advising that I am the Officer who has your file requesting a review of the Notice of Termination that was served to you by your landlord regarding your unit 201 at 190 Millennium Drive.

Would you kindly contact me, to discuss this.

I can be reached at 506-227-6809.

.....

Mr. Gaudet,

I am the Residential Tenancies Officer assigned to this case for the review of a Notice of Termination. I have recently received the file and am beginning my investigation.

The tenant, Tina Henderson, residing in unit 201 at 190 Millennium Drive, has requested a review of the notice issued to her on January 31, 2025, which is set to take effect on February 28, 2025. I would like to inform you that the tenancy will remain in effect until my investigation is concluded.

Additionally, the tenant alleges that the notice was served in retaliation for a complaint she filed with our office on January 23, 2025, regarding a notice of rent increase. As stated in Section 24.1(1) of the Residential Tenancies Act, the following applies:

24.1(1) Where a tenant makes a complaint against a landlord, a notice of termination of the tenancy served by the landlord within the period beginning the day on which the complaint was made and ending one year after that day is not valid if

- (a) the tenant advises a residential tenancies officer in writing within 15 days after the receipt of the notice that the tenant intends to contest the notice, and
- (b) the landlord does not satisfy the residential tenancies officer that he did not serve the notice of termination because the tenant made the complaint.

The notice of termination is dated January 31, 2025, and the tenant submitted their application on the same date, which falls within the 15-day period. Consequently, I will proceed with my investigation. As outlined in the legislation, it is the responsibility of you, the landlord, to demonstrate to the residential tenancies officer that the notice of termination was not served in response to the tenant's complaint.

I would also like to extend the opportunity for you to provide any evidence or arguments you wish to submit that could support your position and indicate that the notice was not issued as retaliation.

Once I am satisfied that the notice of termination was not served in retaliation, my role will be to investigate further and determine the validity of the notice.

The three potential outcomes being: confirm the notice as is, confirm the notice but delay the date of termination or dismiss the notice.

Below are the applicable section of the Residential Tenancies Act:

24.12(4) When a tenant applies to a residential tenancies officer under subsection (3), the residential tenancies officer shall review the notice and ask the landlord to establish the reason for the termination.

24.12(5) The residential tenancies officer shall set aside the notice of termination if the landlord fails to establish to the satisfaction of the residential tenancies officer that the reason for the termination is one of those listed in subsection (1).

24.12(6) The residential tenancies officer shall confirm the notice of termination and may vary the day on which the tenancy is to terminate if the landlord establishes to the satisfaction of the residential tenancies officer that the reason for the termination is one of those listed in subsection (1).

The reason indicated in the notice of termination provided to the tenant is that the landlord or their immediate family intends to occupy the premises.

I request that you provide evidence regarding the individual(s) who will be moving into the premises, as well as their relationship to you. Please send any relevant documentation or proof you may have related to this move, along with any additional information you would like me to consider when making my decision. I would appreciate it if you could submit this information to me via email by March 3rd, 2025, at 4:00 PM.

Thank you for your cooperation.

.....

Tina,

Further to my previous email to you, my role is to investigate and render a decision. There are 3 possible outcomes: Confirm the notice as is, confirm

the notice but delay the date of having to move out, dismiss the notice and the tenancy continues.

I am in the process of reviewing all the information and statements that you have provided to our office, along with the evidence that has been submitted. I will then gather additional evidence and speak to both parties.

If you have any additional evidence, you would like for me to consider please send it to me by email. Please note that the tenancy continues until a decision is rendered.

I look forward to hearing from you.

[11] Thereafter, the RTO followed up with both the Applicant (Mr. Gaudet) and the Respondent requesting evidence/documentation regarding the Notice. The Respondent provided evidence of having advised Mr. Gaudet on January 14, 2025 of the advice she received from the TLRO that any rent increase was capped at 3% (paragraph 6) which was followed by Mr. Gaudet's voicemail on the same date (paragraph 7) and the Notice approximately two weeks later (January 31, 2025). For his part, Mr. Gaudet (on behalf of the Respondent) explained that he served the Notice in good faith because he decided over the Christmas holidays that he and other members of his family would move into the Millenium Drive property on or about March 1, 2025. He stated that his primary residence was in Woodstock and that he required a residence in this area in which to reside and intended to live there for three months or longer. When pressed to provide details of other available units in the 190 Millenium Drive building and an adjoining building owned by the Applicant, Mr. Gaudet declined on the basis that he had provided all information that was necessary. Specifically, under his email of March 6, 2025, Mr. Gaudet advised the RTO that:

"I have provided you with the reasons I intend to move into the unit ... under Section 24.12 of the Act Gaudet Properties is not required to provide you with business records or other information to substantiate that my decision to move reflects ideal business practices or that I am without any alternative ... the reason for the termination ... falls squarely in line with my right to terminate under Section 24.12(a)."

(The RTO's independent due diligence had disclosed two leases in 190 Millenium Drive commencing March 1, 2025 and advertisements for two vacant units in the adjoining building on the same date.)

[12] The RTO's determinations, following his investigation and review of the evidence, is set out as follows in the Decision:

"My role in this case is to determine as per S.24.1 of the *Act* whether the Landlord has served you the notice because you filed a complaint, concerning a rent increase against the Landlord and/or if the Landlord has established, to my satisfaction, that the reason for the termination of the tenancy is one of those authorized under S. 24.12(4) of the *Act*.

What is most pertinent in this circumstance is that only after the Tenant brought to the Landlord's attention of our office advising that the 3% rent increase would apply to her situation, the Landlord express a desire for the Tenant to vacate the premises. After reviewing the evidence, I am not convinced that the Landlord did not serve the notice of termination in retaliation for the Tenant's complaint. The Landlord did not adequately address the availability of other units within the building and the neighboring property, despite multiple requests for this information. Additionally, the Landlord's claim that the Tenant intended to move out was merely an inquiry from the Tenant, as the Tenant did not provide the Landlord with a Notice of Termination indicating she was ending her tenancy. The Landlord's failure to provide clear evidence regarding the availability of other units and the necessity to move into the specific unit occupied by the Tenant suggests that the notice was served in retaliation. Therefore, I find that the notice of termination was likely issued as a result of the Tenant's complaint, rather than for the reasons stated by the Landlord.

In viewing the foregoing, under Section 24.1(1)(b), the Landlord bears the burden of satisfying the Residential Tenancies Officer that the notice of termination was not issued in retaliation for the Tenant's complaint. Despite being given an opportunity to provide evidence to this effect, the Landlord has failed to satisfy the Residential Tenancies Officer that the termination notice was not served because the Tenant made the complaint.

Therefore, the notice of termination served on January 31st, 2025 in invalid as per S. 24.1 of the Act. The tenancy shall continue under the terms of the existing tenancy agreement, and the Landlord is not permitted to terminate the tenancy under the same notice.

The file is now closed.”

LAW

[13] Section 27(1) of the *Act* provides the authority for the Applicant to bring the within Application on two grounds, lack of jurisdiction or error of law, both of which are alleged. It is well established that a Section 27(1) application is an appeal for which the standard of review is correctness and, in the course of which, findings of fact by the Residential Tenancies Officer are final. – see ***Tammy Purdy & Todd MacLellan v. Kim Estabrooks***, 2025 NBKB 164, and ***McCarthy et al v. Guest et al***, 2020 NBQB 150.

[14] Section 27(2) of the *Act* requires a landlord or tenant who wishes to challenge a decision of a Residential Tenancies Officer to serve the Application on the TLRO in accordance with the **Rules of Court**. The TLRO is then obligated under Section 27(5) to forward to the Court “all documentation in the possession of the Residential Tenancies Officer or the Chief Residential Tenancies Officer relating to the application and, if written reasons were given for the decision, a copy of those reasons”. Section 27(5) gives the judge hearing the application discretion to “receive such evidence, oral or written, as is relevant to support or repudiate any allegations contained in the Application”.

[15] Residential Tenancies Officer’s are responsible for carrying out their duties and responsibilities under the *Act* and, for purposes of doing so, may exercise the powers and perform the functions set out in Section 26(2), including receiving and investigating complaints of conduct in contravention or violation of the law of landlord and tenant

(sub-paragraph (d)) and the investigation and inspection of premises (sub-paragraph (h)).

[16] Under the original Application, the Applicant named the RTO as a party and made wide-ranging allegations of bias (targeted action against the Applicant) on the part of the TLRO (in relation to the within matter and other files) and allegations of breach of procedural fairness. There were also issues surrounding the timing of when the Applicant had access to the RTO's file in order to prepare for the hearing. It was observed that this Court is not an appropriate venue in which to express political dissatisfaction with the regime established under the *Act*. The end result was the October Order and the request for a brief from the *Amicus Curiae*. Ultimately, as already noted, the Applicant abandoned its breach of procedural fairness argument. The following paragraphs (17-20) are intended to capture some thoughts on how these matters could be dealt with in future in circumstances where an ever-increasing number of Residential Tenancy Officers' decisions are being challenged before this Court.

OBSERVATIONS

[17] First, the naming of the RTO as a party under the original Application was inappropriate. This was addressed in the October Order. For clarity, the TLRO's obligation, upon receipt of a Notice of Application pursuant to Section 27(2), is to forward the materials referenced in Section 27(4) to the Court, subject always to Section 27(5) and any further assistance the Court may request pursuant to its inherent jurisdiction.

[18] Second, service of an Application at the 10-day deadline permitted under **Rule** 16.08(3) provides the TLRO with minimal time to copy and forward the file materials and the party opposite inadequate time to prepare for the hearing, particularly if their access to relevant documentation is through the Court file. At the hearing the TLRO, through the *Amicus Curiae*, offered to forward courtesy copies of its file materials to the

parties at the same time these materials are forwarded to the Court. On the go forward, each time an Application under Section 27(1) is received and scheduled in the Judicial District of Saint John, the applicant will be directed to serve the TLRO and respondent not later than 20 days prior to the scheduled hearing date with copies of the Application and the Court's directive. The directive will include a statement that it is the understanding of the Court that the TLRO will forward copies of its file to the last known addresses of the parties at the same time as these materials are forwarded to the Court. In this way it is anticipated that in future all parties can appear being fully cognizant of the background to the decision under review.

[19] Third, as noted in paragraph 13, challenges under Section 27(1) are limited to lack of jurisdiction or error of law and findings of fact by a Residential Tenancies Officer are not subject to review. This is driven by the language of Section 27(1) and the practical reality that Residential Tenancies Officers conduct investigations and make determinations within the confines of the *Act*. They do not hold formal hearings, there is no sworn testimony and Residential Tenancies Officers do not have to be lawyers. There are no transcripts, and the parties themselves are frequently per se.

[20] In these circumstances, the record must of necessity be limited to the TLRO's file, subject always to the Court's discretion under Section 27(5) to receive further evidence in exceptional circumstances where the Court finds same to have potential bearing on a question of law or jurisdiction (distinct from the factual determinations that led to a decision). This interpretation gives meaning to Section 27(5) while being consistent with the law governing statutory appeals – see ***Bell Canada v. British Columbia Broadband Assoc.*** [2020] F.C.A. 140 (F.C.A.). Moreover, it is reflective of the practical reality that in the absence of these limitations this Court could quickly find itself, for all practical purposes, supplanting the role of Residential Tenancies Officers and becoming the arbitrator of landlord – tenant disputes in the first instance.

ANALYSIS

[21] Turning back to the issues raised by the Applicant, I begin with jurisdiction. The Applicant pointed out that the Decision of the RTO to invalidate the Notice was grounded on Section 24.1(1) because the Applicant failed to satisfy the RTO that the Applicant “did not serve the notice of termination because the tenant made a complaint”. The Applicant observed that in this instance there was no complaint. The Respondent reached out to the TLRO for assistance, but was unable to provide any notice of rent increase and her file was closed on January 27, 2025. As observed in paragraph 8, there is no evidence of any rent increase or contravention of the *Act* prior to service of the Notice.

[22] In these circumstances, the Applicant contended that there was no complaint and consequently the RTO had no jurisdiction to proceed under Section 24.1(1). The Applicant’s argument was well presented, but the issue of the nature of the complaint (communication with the TLRO) required to invoke the jurisdiction of Section 24.1(1) was already addressed by Justice Dysart (now of the Court of Appeal) in **Estabrooks** as follows:

“The Applicants argue that there was no such complaint made by the tenant in respect of the rent increase, such that s. 24.1 has no application. They argue that, in order to trigger that section, the tenant would have had to comply with section 6, which requires that a notice be sent in writing, that it state the address of the demised premises to which the notice relates, and is to be dated and signed by the tenant.

The term complaint is not defined in the ***Act***. The Applicants argue that something formal must be required, otherwise every email or Facebook Messenger communication to the landlord could be treated as a complaint.

While I appreciate that argument, the clear intent of s. 24.1 of the ***Act*** is to ensure that, where there is a suggestion on the part of the tenant that the landlord is acting as retribution for a complaint, the burden shifts to the landlord to satisfy the RTO that the termination is not retaliatory. In

taking a purposive approach to the legislation, it is difficult to understand why such protections would only be afforded to tenants who filed a formal complaint.

There is no jurisprudence on this matter, but I am of the view that the term complaint, as it is used under s. 24.1 of the **Act**, is not restricted to situations where the tenant sends a formal complaint to the landlord pursuant to s. 6. It includes situations, such as here, where the tenant had objected to something done by the landlord, which might be seen to engender termination for improper purposes.

As a result, I am not convinced that there is any error of law.”

[23] In this case, we had the Respondent’s outreach to the TLRO for assistance (paragraphs 4-5) followed by the TLRO’s response (paragraph 6). This information was shared by the Respondent with Mr. Gaudet on January 14, 2025 which was followed by Mr. Gaudet’s response on the same date (paragraph 7) and the Notice two weeks later (paragraph 8). So on January 14, 2025 Mr. Gaudet is telling the Respondent “we’re definitely not on board with the 3% ... it will be the increase that we asked for” (which validates (confirms) the legitimacy of the Respondent’s January 13, 2025 communication to the TLRO that Mr. Gaudet intended to raise her rent by more than 3% and the reality that the Respondent shared the TLRO-response with Mr. Gaudet) only to forget the issue of rent and serve the Notice two weeks later in circumstances where he would later inform the RTO (email March 1, 2025 page 148 of the Record) “I thought about moving into the unit she is renting over the Christmas holiday period”.

[24] It is apparent that the Respondent, acting on advice from the TLRO, objected to any increase in her rent above 3% and Mr. Gaudet responded forcefully to that suggestion with the message noted in paragraph 7. To paraphrase Justice Dysart, it is self-evident from this exchange that the Respondent’s objection to the rent increase coupled with her outreach to the TLRO for advice and later assistance might be seen (could logically be regarded) as an event that could engender (result in) termination for an improper purpose. In its submissions the Applicant attempted to distinguish **Estabrooks** on the basis that the “complaint”, as referenced in Section 24.1(1), must

relate to something contrary to the *Act* (in **Estabrooks** it was a notice of rent increase) as otherwise inconsequential/nuisance inquiries (complaints) by the tenant could be used to negate the ability of a landlord to serve a notice of termination. The Applicant pointed out that when the Applicant served the notice of rent increase in August/September 2024 it was not contrary to the *Act* and it was never acted upon. I appreciate the distinction the Applicant is endeavouring to make, but observe as Justice Dysart did that “complaint” is undefined in the *Act* and the inference to be drawn from a communication similar to Mr. Gaudet’s January 14, 2025 voicemail is clear. Further, landlords always have recourse through Section 24.1(1.1) in the event of inconsequential/nuisance inquiries (complaints) to the TLRO. Consequently, the Applicant’s application on the issue of jurisdiction is dismissed.

[25] I must also observe that the issue of the validity/impact of the rate cap provisions of the *Act* that came into force on December 13, 2024 are not of relevance for purposes of this decision. As already noted, there is no evidence of any notice of rent increase being served or acted upon. We have only the Respondent’s communication with the TLRO, her advising Mr. Gaudet of the advice from the TLRO and Mr. Gaudet’s response to same. If Mr. Gaudet had proceeded with the rent increase (which his January 14, 2025 voicemail makes clear was in play) this matter might well fall to be decided on the basis of the validity/retroactive effect of same. However, that did not happen and what falls to be decided under the Application is the correctness of the RTO’s decision to invalidate the Notice pursuant to Section 24.1(1) of the *Act*.

[26] The Applicant’s second objection to the Decision was that the RTO improperly applied the analysis of application pursuant to Section 24.1(1) in circumstances where it fell to be determined under Section 24.12(1). I will dispose of this argument quickly. In both the initial communication from the TLRO to the Applicant on February 21, 2025 and the RTO’s February 25, 2025 follow-up communication (following his appointment to investigate the Notice) the TLRO/RTO reference both Sections 24.1(1) and 24.12(1) and, more fundamentally, identified the Respondent’s allegation that the Notice was

served as retaliation for the Respondent's making of a complaint against the Applicant with the TLRO (paragraph 9 and 10).

[27] Against this backdrop, and in circumstances where the Notice identified the intention of Mr. Gaudet and his family to reside in the premises, both Section 24.1(1) and 24.12(1) were possibly of relevance and were properly referenced by the TLRO/RTO in their communications. Thereafter, the RTO proceeded with his investigation and identified the circumstances surrounding the Respondent's earlier communication with the TLRO regarding the proposed rent increase and, in consequence thereof, grounded his Decision under Section 24.1(1). I take note of Mr. Gaudet's March 6, 2025 communication to the RTO advising that he had provided all information required under Section 24.12 (paragraph 11). I acknowledge Mr. Gaudet's perspective, but must observe that his efforts to focus the analysis on Section 24.12(1) does not make that a reality. As I have already noted, Section 24.1(1) was engaged and available to the RTO in the circumstances of this case and there was no impediment to his grounding of his decision on the basis of same following completion of the investigations as noted in the Decision. Consequently, the Applicant's second ground of attack is also dismissed.

[28] With respect to the Applicant's third ground, the Record is clear. The TLRO and RTO were both transparent in their communications with the Applicant regarding the basis of the Respondent's complaint and that Sections 24.1(1) and 24.12(1) were under consideration (paragraph 9-10). This all occurred in circumstance where Mr. Gaudet was well aware (as evidenced by his January 14, 2025 voicemail) that the Respondent had gone to the TLRO to complain (obtain guidance/assistance) regarding the proposed rent increase. The RTO provided Mr. Gaudet multiple opportunities to provide additional information which Mr. Gaudet ultimately declined on the basis that he had provided everything required under Section 24.12(1). As already noted, both Section 24.1(1) and 24.12(1) were in play and it was quite simply not in Mr. Gaudet's purview to shut down the applicability of Section 24.1(1).

[29] For the Record, in the circumstances of this case, I believe the RTO proceeded properly in identifying both Sections 24.1(1) and 24.12(1) in his initial communication with the Respondent and ultimately focusing the Decision on Section 24.1(1). Factual determinations, as already observed, fall within the domain of Residential Tenancies Officers, but I would be remiss if I did not observe that Mr. Gaudet's January 14, 2025 voicemail (your rent is going up by the increase we asked for) followed 15 days later by the Notice, in circumstances where Mr. Gaudet advised he thought about moving into this unit over the Christmas holiday and ultimately declined to answer the RTO's further queries, cause me no unease with the RTO's ultimate determination. Consequently, the Applicant's third line of attack is also dismissed.

[30] The Decision was well-crafted and set out in detail the investigations undertaken by the RTO and the reasons for his Decision. Only one part of the Decision caused me any concern. On page 4 of the Decision the RTO observes as follows:

My role in this case is to determine as per S.24.1 of the *Act* whether the Landlord has served you notice because you filed a complaint, concerning a rent increase against the Landlord **and**/or if the Landlord has established, to my satisfaction, that the reason for the termination of the tenancy is one of those authorized under S.24.12(4) of the *Act*.

[31] The use of the word "and" (highlighted above) is not appropriate because, if the RTO determined that Section 24.1(1) was engaged, then it was not possible for the Applicant to have satisfied the "good faith" requirement under Section 24.12(1). Nothing turns on this because, as already observed in paragraphs 28 and 29, both the RTO and TLRO were transparent with the Applicant in their communications that both Sections 24.1(1) and 24.12(1) were under consideration. However, it does lead to the observation that against the backdrop of Mr. Gaudet's January 14, 2025 voicemail, subsequent communications with the RTO and the RTO's concluding "I find the notice of termination was likely issued as a result of the tenant's complaint", it is highly unlikely that the Applicant could have satisfied the good faith requirement of Section

24.12(1) had the RTO shaped his inquiry as suggested by Mr. Gaudet. This same point was addressed by Justice Dysart in paragraph 34-40 of **Estabrooks**.

[32] By reason of the foregoing, the Application is dismissed. As the Respondent did not respond to the Application or appear, I make no order of costs.

DATED at the City of Saint John, NB this _____ day of April 2026

Mr. Justice Darrell J. Stephenson
Court of King's Bench – Trial Division

Schedule "A"