

Residential Tenancies Tribunal

Application 2022-No.145-NL
2022-No.311-NL

Decision 22-0145-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:02 a.m. on 09-June-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent and counter complainant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that she served the tenant, notice of the hearing, by email 17-March-2022. The tenant submitted an affidavit (TT#01) stating that she served the landlord, notice of the hearing, by email on 19-April-2022. Both parties confirm service.
5. The landlord amended her application to correct a clerical error on her application for utilities increased from \$210.37 to \$210.70.

Issues before the Tribunal

6. The landlord is seeking
 - Rent \$1,400.00
 - Utilities \$210.70
 - Hearing expenses reimbursed \$20.00

The tenant is seeking

- Compensation for inconvenience \$1,311.34
- Hearing expenses reimbursed \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions and Section 18: Notice of termination of rental agreement.

Issue 1: Rent \$1,400.00

Landlord's Position

9. The landlord provided a copy of the rental agreement (LL#02). She said that the tenant moved in 01-October-2018. The landlord said that the agreement is monthly and is from the 1st day of the month until the last day of the month. The landlord said that rent is \$1,400.00 a month, utilities are not included. She said that rent is due on the 1st, however, the payments made by the tenant are irregular; she said that the payment could come in weekly, bi-weekly or monthly. She said that the tenant did not pay a security deposit.
10. The landlord acknowledges that the agreement states that the tenant will pay \$350.00 each Friday for rent.
11. The landlord said that she had told the tenant, in September 2021, that the rent will be increasing to \$1,600.00 a month and she wants full payment on the first day of each month.
12. The landlord said that the tenant informed her on 26-December-2021 that she would be moving out sometime in January 2022. She said that the house has stairs and the tenant has a child with a disability, so they need a place without stairs. She also said that the tenant could not afford the rent. She said she agreed to accept the notice.
13. The landlord said that the tenant moved out on 14-January-2022. The landlord said that rent was paid in full until January 2022, she did not receive any rent for January and she is seeking the full amount for the month \$1,400.00. She acknowledges that she didn't apply the scheduled increase. She provided a rent ledger (LL#03) for the month of January 2022.

Tenant's Position

14. The tenant disputed the terms of the rental agreement and that she said she is supposed to pay \$350.00 every Friday. The tenant said that the landlord informed her on 03-September-2021 that the rent would be increasing 01-January-2022.
15. The tenant confirms that she told the landlord that they would be moving in January on 26-December-2022. She said that she does require a house without steps, but she is also moving because she has issues with the house and the landlord is not addressing the issues.

16. She said, in the past when she had issues, she withheld rent until the issues were resolved.

Analysis

17. Non-payment of rent is a violation of the rental agreement. There is some discrepancy around the terms of the rental agreement, (LL#02) therefore I will defer to the actual written agreement, submitted by the landlord and signed by the parties in 2018. The written agreement states that \$350.00 rent is due each Friday. This term is acknowledged by the landlord in paragraph 10 and stated by the tenant in paragraph 14.
18. Payment of rent on Fridays will apply for the purpose of the decision.
19. The landlord said, paragraph 12, that she accepted the notice given to her by the tenant. The notice was that, the tenant would be moving “sometime” in January. The landlord could have demanded proper written notice with specific dates applied. However, Section 18 (5) of the *Residential Tenancies Act, 2018*, states:

Notice of termination of rental agreement

*18. (5) Notwithstanding subsections (1) to (3), a notice of termination is **not required** to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.*

20. The landlord agreed to the tenant moving and the tenant moved on 14-January-2022. The tenant will therefore only be responsible to pay rent up to the termination of her tenancy. The payment schedule in the rental agreement (LL#02) is for each Friday, therefore, the tenant should have paid \$350.00 on 31-December-2021 and \$350.00 on 07-Friday-2021. The next Friday the tenant has moved.
21. I find that the tenant shall pay \$700.00 to the landlord for rent up to the date of termination.

Decision

22. The landlord’s claim for rent succeeds in the amount of \$700.00.

Issue 2: Utilities \$210.70

Landlord’s Position

23. The landlord said that when the tenant moved on 14-January-2022 she had her name removed from the Newfoundland Power Bill. The landlord said that she was responsible for the electric bill until the end of the month. She provided the utilities ledger (LL#04) showing the billing from 15-January-2022 – 04-February-2022 totaling \$210.70.
24. The landlord is seeking reimbursement of this expense.

Tenant's Position

25. The tenant agrees that she removed her name from the billing; she said it was the day she moved and she isn't responsible to heat the house after that time.

Analysis

26. I agree with the tenant, that her tenancy has ended as of 14-January-2022 and she is no longer responsible for the payment of utilities after that date.

Decision

27. The landlord's claim for utilities fails.

Issue 3: Compensation for inconvenience \$1,311.34

Tenant's Position

28. The tenant said that she believes there is an issue with the heat pump used to heat the house. She said she was on an equal payment plan with Newfoundland Power for \$269.00 a month, beginning 01-October-2018.
29. The tenant said on 17-December-2020 she was told that her equal payments would be increasing to \$513.00 per month. The tenant said that the increase was not due to payment arrears and she believes the issue was with the heat pump.
30. At the time of the increase she said that the representative from Newfoundland Power questioned how the house was heated and she told her by heat pump. The representative questioned how long ago the heat pump was serviced.
31. The tenant contacted the landlord on 17-December-2020 and requested that the heat pump be serviced. The landlord responded on the same day and inquired if the heat pump was indicating for the filter to be changed. The tenant told her she had changed it within the past month.
32. The heat pump was not serviced until July of 2021.
33. Later, on 29-December-2020, the tenant ran into issues with the hot water. The landlord told her that the hot water tank is new, and said she would have a person come check it. The plumber checked in on 31-December-2020 and came back to repair it on 06-January-2021.
34. The tenant said she didn't complete an order for repairs form, she and the landlord just texted back and forth about any issues.

35. The tenant doesn't believe that the issue with the hot water impacted the electric bill, however, she said that the heat pump was replaced and the billing went down after July 21.
36. The tenant completed a compensation for cost worksheet (TT#02), she said she listed the cost of the electricity bill that exceeds her original equal payment plan of \$269.00 a month. The list is as follows:

Billing Period	Cost
January 2021	207.91
February 2021	78.12
March 2021	153.45
April 2021	54.89
May 2021	288.17
June 2021	268.68
July 2021	260.12
Total	\$1,311.34

37. The tenant also provided the electricity bill (TT#03) which displays her new equal payment plan amount of \$513.00 per month. The copies had the previous balance, EPP charges and deferred balance covered. These bills do show her actual usage per month, as follows:

Actual usage cost	Cost
06-January-2021	607.91
04-February-2021	478.12
08-March-2021	553.45
07-April-2021	454.89
06-May-2021	438.17
07-June-2021	418.68
07-July-2021	410.12

Landlord's Position

38. The landlord confirms the details of the issues with the heat pump and the hot water.

Analysis

39. The evidence provided by the tenant is unclear. She provided a cost worksheet and informed this board that (TT#02) that she applied any cost over the initial equal payment plan of \$269.00 (paragraph 35). When the cost of actual charges are viewed in the table from paragraph 36, the amount applied in the cost worksheet (paragraph 35) is not an overage charge exceeding the original \$269.00 a month. See below

Actual usage cost	Cost	Less 269.00	Cost worksheet
06-January-2021	607.91	338.91	207.91
04-February-2021	478.12	209.12	78.12
08-March-2021	553.45	284.45	153.45
07-April-2021	454.89	185.89	54.89
06-May-2021	438.17	169.17	288.17
07-June-2021	418.68	149.68	268.68
07-July-2021	410.12	141.12	260.12

40. The tenant's equal payment plan is currently \$513.00 per month. The increase of the cost per month from \$269.00 to \$513.00 a month, could be related to the heat pump, but more than likely, would reasonably be from, more electricity usage due to a larger number of people living in the house (since the last tenants) or from past arrears being averaged out to be paid off over a period of time. The fact that the electricity cost is not going down in the spring and summer months is an indication that the high cost is not related to the cost of heating the house.
41. The tenant has not proven that the cost of her Newfoundland Power bill is related to issues with the heat pump and the fault of the landlord.

Decision

42. The tenant's claim for inconvenience fails.

Issue 4: Hearing expenses reimbursed \$20.00

43. The landlord (LL#05) and the tenant (TT#04) submitted the receipt for \$20.00 for the cost of the hearing and pursuant to policy 12.01, as the landlord's claim is successful, she is entitled to reimbursement of that cost from the tenant.

Summary of Decision

44. The tenant shall pay the landlord \$720.00, as follows:

- Rent \$700.00
- Hearing expenses 20.00
- Total..... \$720.00

June 10, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office