

Residential Tenancies Tribunal

Applications: 2022 No. 0512 NL

Decision 22-0512-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 15 August 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, did not participate in the hearing.
4. An affidavit of service was provided by the tenant confirming that the landlord was served of the claim against him (T#1). The tenant testified that he knew to serve electronically because this was the address used for e-transfer payment from the tenant. The affidavit was not signed by a commissioner of oaths, but proof of electronic service was provided for the day claimed.
5. The details of the claim were presented as a multi-year tenancy continuing since May 2019 in this particular rental unit. Rent was set at \$760.00 a month, exclusive of utilities, and a security deposit in the amount of \$350.00 was collected. The tenant informed that this security deposit has since been disposed of to the satisfaction of both parties.
6. In a proceeding under the *Residential Tenancies Act*, 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. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The tenant is seeking an order for payment of utilities in the amount of \$900.00.

Legislation and Policy

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

Preliminary Matters

9. The tenant was not present or represented at the hearing and I was unable to reach them by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served.
11. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue #1: Payment of Utilities (\$900.00)

Relevant Submissions

12. The rental premises is a single family house located at [REDACTED]. The tenant residing in the two-bedroom basement apartment. The tenant lived by himself in this unit until September 2021 when he took on a tenant of his own. The tenant testified that he charged his own tenant \$500.00 for rent, all inclusive a month and that heat in the rental unit was electric, with room specific temperature controls located on each heating unit.
13. The tenant testified that he vacated the rental premises on 02 February 2022 and that he is seeking compensation for payment of utilities in response to a hot water leak in the bathtub of the rental premises that started 04 November 2021 and was fixed 11 January 2022. The tenant testified that the fix to the tub was a quick fix and that it took "5 minutes".
14. The tenant testified that he promptly reported the issue to his landlord and that the landlord had allegedly offered to pay for any increases experienced in the tenant's utility bill as a result. The tenant called his fiancé, [REDACTED] as a

witness to the tenant's experience of the leak. [REDACTED] testified that the landlord allegedly promised to have the leak fixed the following day, however, the leak was not fixed for approximately 2 months. [REDACTED] testified that he is hard of hearing and that he observed the abovementioned exchange between the tenant and landlord while both were on the phone.

15. The tenant testified that he is seeking compensation for his full bills from Newfoundland Power for the months that the bathtub was leaking hot water because this leak "*jacked up*" his utility bill. The tenant submitted proof of the following invoices from Newfoundland Power (T#2):
 - November 2021 = \$176.82
 - December 2021 = \$385.45
 - January 2022 = \$549.67
16. The tenant is seeking compensation for \$900.00 because it "*pretty much*" represents the full amount of his December 2021 and January 2022 invoices paid to Newfoundland Power (e.g., \$385.45 + \$549.67 = \$935.12). The tenant testified that he did not claim a percentage of compensation because he did not know how to calculate out the actual percentage of power compensation that would have been represented increased hot water usage due to the hot water leak.
17. The tenant pointed to the "**Your past energy usage**" section of his invoices to highlight how his usage for December 2021 and January 2022 was significantly higher than the same month the prior year (e.g., 2590 kWh vs 1481 kWh and 3748 kWh vs. 1882 kWh) as evidence that the hot water leak in the tub caused the increase in usage.
18. When asked what he believed to be the impact of the second tenant on increased power usage, the tenant indicated that his tenant was "*never home*" and so he would not have used a substantial amount of power. The tenant testified that he had his landlord provide the written rental agreement on 09 August 2021 to help him secure a tenant of his own (T# 3).

Analysis

19. As noted in paragraph 6, the applicant is responsible for establishing on the balance of probabilities that the issue they are claiming, indeed happened as they claim. I was not convinced by the evidence put forward by the tenant in support of his claim for the following reasons:
 - The tenant claimed compensation for utilities because the utility usage was higher for the months of the leak than it was the year previous – however, the tenant discounted the impact of having a second person in the rental unit as a contributor for why his utility costs were higher.
 - The tenant claimed compensation for the full amount of his utility bill for the months of leak, even though the hot water heater represented an unknown fraction of the overall utility bill.


20. Consequently, the tenant's claim for compensation does not succeed.

Decision

21. The tenant's claim for compensation for utilities does not succeed.

17 August 2022

Date


Jaclyn Casler
Residential Tenancies Board