

Residential Tenancies Tribunal

Application 2023-1174-NL

Decision 23-1174-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 13-February-2024.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit with her application (TT#1) stating that she had served the landlord with the notice of hearing on 21-December-2023 via prepaid registered mail [REDACTED]. The landlord confirmed receiving the document. This is good service.
5. There was a verbal rental agreement that commenced on 1-February-2023. The tenant vacated the unit on 1-December-2023. Rent was \$1200.00 per month due on the first of each month. A security deposit of \$600.00 was paid and is no longer in the landlord's possession.

Issues before the Tribunal

6. The tenant is seeking:
 - a. Utilities paid \$429.25
 - b. Compensation for inconveniences \$100.00

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*.

Issue 1: Utilities paid \$429.25

Relevant Submissions

8. The tenant testified that when she vacated the unit on 1-December-2023 there was in excess of 290 liters of oil remaining in the oil tank and the tenant submitted a copy of a letter from *North Atlantic* dated 7-December-2023 showing the dip reading from the tank to support her claim (TT#2).

Tenant's Position

9. The tenant testified that the oil tank was empty when she moved into the unit on 1-February-2023 and she stated that she took a picture of the gauge on the oil tank showing that the tank was empty (TT#3). The tenant also submitted a copy of a text message dated 28-January-2023 at 2:15pm from her to the landlord saying that she just checked the oil tank and it is empty (TT#4). The tenant stated that as the tank was empty at the commencement of the tenancy, it should also be empty at the end and she stated that she had an agreement with the landlord whereby the landlord would have the tank dipped to see how much oil was remaining in the tank so she could reimburse her for the cost of the remaining oil. The tenant submitted a copy of a text message from the landlord dated 31-October-2023 at 3:25pm to support her claim that the landlord agreed to reimburse her for the remaining oil in the tank (TT#5).

Landlord's Position

10. The landlord does not dispute that there was 290 liters of oil left in the tank when the tenant vacated the unit, however the landlord does dispute that the tank was empty when the tenant moved in. The landlord testified that the gauge on the tank falsely showed empty as the tank is on a slant which affects the reading of the gauge. The landlord testified that she put 225 liters of oil in the tank on 14-December-2022 (LL#1) and she also testified that another 225 liters of oil was put in the tank by the tenant on 7-January-2023 which she reimbursed the tenant for. The landlord stated that the premises were unoccupied up to the point when the tenant took possession on 1-February-2023 and she stated that there is no way that 450 liters of oil would be used in that timespan with nobody residing at the premises. The landlord stated that the oil tank was not empty at the beginning of the tenancy and should not be left empty at the end. The landlord stated that she should not have to reimburse the tenant for the 290 liters of oil remaining and suggested reimbursing the tenant for a portion of the remainder of the oil in the amount of \$100.00.

Analysis

11. The undisputed issues are as follows:

- The landlord put 225 liters of oil in the tank on 14-December-2022
- Another 225 liters of oil was put in the tank on 7-January-2023
- The premises were unoccupied from 14-December to 1-February (almost 7 weeks)
- There was 290 liters of oil in the tank on 7-December-2023 (13 days after tenant vacated).

12. The disputed issues are as follows:

- The oil tank was empty at the commencement of the tenancy.
- The oil tank has a faulty gauge.

13. I accept that the landlord put 225 liters of oil in the tank on 14-December-2022 which equates to roughly $\frac{1}{4}$ of a tank. It is reasonable to assume that most of that oil was burnt by the time the second delivery of 225 liters arrived on the 7-January-2023 as that was a 3-week period during one of the coldest months of the year. I accept that the landlord reimbursed the tenant for the second 225 liters of oil that was put in the tank on 7-January-2023. During this time the landlord had workers in the unit completing minor renovations which required additional heat to be on. With that said, I have no way of determining exactly how much of the 450 liters of oil was remaining in the tank when the tenant moved in. I find that the landlord was unable to show how much oil was in the tank when her tenant took possession of the unit. I find that the tenant on the other hand was able to show that the gauge on the tank read *empty* when she moved in. The landlord disputes that the reading was accurate as she claims that the tank is slanted causing a faulty reading. I asked the landlord if she had proof that the tank was slanted, and she responded that she did not. I also asked the landlord if she had advised the tenant that the tank was slanted, and she responded that she did not. The text messages entered into evidence show that the tenant texted the landlord stating that the tank was empty when she moved in, the landlord acknowledged that message without advising the tenant that the tank was not empty due to the faulty gauge.
14. I accept that there was a small portion of oil remaining in the tank when the tenant moved in, otherwise the furnace would have had to be bled. However, I do not know exactly how much oil was in the tank. I find that the onus was on the landlord to show how much oil was in the tank when her tenant took possession. Based on the testimony and exhibits entered to evidence by both parties, I find that the tank was close to empty when the tenant moved in. The landlord stated in a text message that she would have the tank dipped to see how much oil was remaining to determine how much she owed the tenant. This shows that the landlord accepted that she was responsible, or at least willing to reimburse the tenant for the value of the remaining oil. Without any proof as to the amount of oil in the tank at the commencement of the tenancy, I am unable to make a determination as to what the amount was. For those reasons, I find that the landlord is responsible to reimburse the tenant for the 290 liters of oil in the tank as identified by *North Atlantic* on 7-December-2023. There obviously was more than 290 liters of oil in the tank when the tenant vacated the premises on 24-November-2023, and I find that any amount in excess of the 290 liters which was used by the landlord during the 2-week period after the tenant vacated before the dip reading was completed will fairly compensate the landlord for the amount that was potentially in the oil tank at the commencement of the tenancy.
15. I find that the landlord is responsible to reimburse the tenant for 290 liters of oil which equates to \$429.25 as per pricing quoted by *North Atlantic* on 7-December-2023.

Decision

16. The tenant's claim for utilities paid succeeds in the amount of \$429.25.

Issue # 2: Compensation for Inconvenience \$100.00

Relevant submission

17. The tenant submitted a *Compensation for Costs of Inconvenience* form seeking \$100.00 for the oil that was burned in the tank from the time she vacated the premises on 24-November to 7-December when *North Atlantic* dipped the tank (TT#6).

Analysis

18. This tribunal can only make decisions on amounts sought by applicants as per the application that they submit for adjudication. The application dated 7-December-2023 has 1 section checked off – *Utilities paid* (TT#7). I accept that the tenant had the *compensation for costs of inconvenience* form attached to her application, however the *Application for Dispute Resolution* form must clearly identify what the applicant is seeking, and the total amount associated with any boxes checked.
19. I find that the tenant cannot seek compensation for anything other than utilities paid in the amount of \$429.25 as per the application and as such, compensation for inconvenience will not be addressed for the purpose of this decision.

Decision

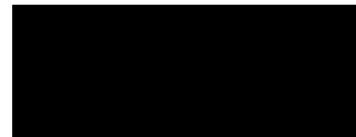
20. The tenant's claim for compensation for inconvenience does not succeed.

Summary of Decision

21. The landlord shall reimburse the tenant \$429.25 for utilities.

February 19, 2024

Date



Pamela Pennell
Residential Tenancies Office