

Residential Tenancies Tribunal

Application 2024-0003-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:46 PM on 1 February 2024 via teleconference.
2. The applicants, [REDACTED], hereinafter referred to as “tenant1”, and [REDACTED], hereinafter referred to as “tenant2”, both attended the hearing. The tenants had a witness, [REDACTED], attend. She is hereinafter referred to as the tenants witness.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. The landlord had a witness, [REDACTED], attend. She is hereinafter referred to as “the landlord’s witness.”

Preliminary Matters

4. Tenant1 submitted an affidavit with her application stating that she had served the landlord personally on 17 January 2024 (Exhibit T # 1). The landlord confirmed receipt of the document on that date. In accordance with the Residential Tenancies Act, 2018 this is good service.
5. The tenants did not amend their application at the hearing.

Relevant Submission / Testimony

6. The rental agreement in place since September 2019 was presented by both parties as being a verbal rental agreement. While some of the details of the rental were agreed upon by the parties, others were in dispute. Those that were agreed upon were as follows:
 - Tenant1 moved into the rental unit located at [REDACTED], on 15 September 2019;
 - Tenant2 moved into the property at a later date, in mid-2023;
 - There was a security deposit in the amount of \$500.00 collected on this tenancy prior to 1 September 2019, which still in possession of the landlord;
 - The utilities account for the residence in its entirety was transferred to the name of tenant1;
 - The tenants vacated the premises 31 January 2024; and

- At the time of vacancy, rent set at \$1000.00 per month.

There was some discrepancy with the initial establishment of rent. Tenant1 testified that the rent was initially established at \$1,100.00 per month but reduced to \$1,000.00 by the landlord when she began questioning the power bill after she received her first bill. It was later, when the original downstairs tenant vacated, that the landlord reduced the rent to \$900.00 (in late 2020 to early 2021). The landlord initially testified that the rent was initially established at \$900.00 per month; but later acknowledged that he may have been incorrect and it may have been \$1000.00 per month and then later further reduced to \$900.00.

Issues before the Tribunal

7. The tenants are seeking the following:

- An order for compensation for utilities paid in the amount of \$19,967.85; and
- An order for refund of rent in the amount of \$1,800.00.

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
9. Also relevant and considered in this case is S. 2, 16, 34, 35, and 42 of the *Residential Tenancies Act*, 2018.

Issue 1: Compensation for Utilities- \$19,967.85

Tenants Position

10. Tenant1 testified that she initially paid \$1,100.00 in rent and \$500.00 security deposit to move into [REDACTED] in September 2019. She stated that on the initial walk-through, the landlord showed her the panel box in the maintenance room but didn't say anything about the other unit being on her bill. She said the landlord told her that utilities would be \$300.00 per month at the most, and she agreed to put the power bill in her name in the month of September 2019.
11. She noted that she began questioning the landlord about the downstairs unit being on her utilities bill when she received a \$160.00 power bill for the month of September 2019, when she wasn't even on the premises until 15 September 2019. She further testified that she didn't have the money to move again immediately, and it was when she began questioning the landlord about the unit downstairs, and he said that he would take \$100.00 per month off the rent, making the rent \$1,000.00 per month. It was later, when the original downstairs tenant vacated, that the landlord reduced the rent to \$900.00 (in late 2020 to early 2021).
12. Tenant1 maintains that she frequently questioned the landlord about the utilities, about trying to come up with a solution such as the potential for separating the power (i.e.:

adding another utilities box for the basement unit), and/or splitting the utilities, all-inclusive rent and so on. She noted the landlords' response was always that they would talk later, and there was never anything done.

13. The tenants are seeking \$19,967.85 in compensation for utilities (power bills) which were paid during the tenancy. Along with the application, the tenants also provided utilities bills and/or NL Power annual statements for the duration of the tenancy (Exhibit T # 2) dating from 2019 to December 2023 totaling the amount noted above. It is noted that the name on the NL power bill changed from tenant1 to tenant2 in mid-2023.
14. Tenant1 testified she had spoken with the landlord about concerns she had with her power bill and about the potential of getting a power panel for the basement tenant which the landlord did not install. Tenant1 stated throughout her tenancy, she had approached the landlord about this issue as there had been multiple different tenants in the basement apartment during her tenancy.
15. Tenant1 stated in December 2019, the landlord changed the monthly rent to \$900.00 in relation to her complaints about there being one power panel for the rental property. Tenant1 testified, "I asked him (the landlord) if I could be given all-inclusive rent. I have consistently questioned him. He said the power bill would not go over \$300 per month. Now it is barely below \$500.00". Tenant1 testified that as a result of being unable to pay the outstanding utilities bill, tenant2 had the bill put under his name in May 2023.

Landlord Position

16. The landlord testified that he took ownership of [REDACTED] in 2018 and described the property as two apartment unit with one electrical panel in the basement area of the property. He stated there was a verbal rental agreement with tenant1 and offered that tenant2 took occupancy as well in 2023.
17. In reference to the rental arrangement, the landlord testified that he had purchased the house from a friend, and that the house was originally all one dwelling, hence one power panel. There was no formal rental agreement, but rent was initially established at \$1,000.00 and then \$900.00 per month (which he asserted was \$300.00 per month below market value at the time), with the understanding that the tenants would pay the utilities for the entire house, which generally cost \$300.00 per month at the time. The landlord noted that there was a small unit downstairs with a separate entrance, etc., with some shared facilities such as laundry. The landlord testified that it was agreed that the occupant downstairs would take care of the property and winter snow clearing.
18. The landlord stated tenant1 was fully aware there was one panel for the two-apartment rental as he described the basement rental as having one bedroom, with own entry way and there was a shared common area of a laundry room and storage room with the upstairs tenants. The landlord maintains that it was clearly communicated to tenant1 in the initial verbal rental agreement that the power bill was for the entire house; that there was one utility box in the house in the bedroom downstairs in the basement unit and the tenant had a key for emergency access.

19. The landlord maintained that he has talked with the downstairs tenants to ensure they were being diligent with their usage of electricity any time that tenant1 raised the issue with him. He also testified that tenant1 delivered a request for repairs to his residence on 28 December 2023 requesting a new electrical panel for the tenant downstairs and a separate laundry room. Copies of text messages between the parties entered into evidence indicates that, from his perspective, this was the first time this was mentioned to him. The landlord's witness testified that she agreed with the testimony offered by the landlord.

Analysis

20. Section 2 of the *Residential Tenancies Act*, 2018, clearly identifies a rental agreement as meaning "*a written, oral or implied agreement between a landlord and a tenant in which the tenant is granted the right to use of occupy a residential premises on the condition that rent is paid.*" Both the tenants and the landlord testified there was a verbal rental agreement in place for [REDACTED].
21. Throughout the hearing, both the tenants and the landlord did not dispute that tenant1 took occupancy in September 2019, and remained in the premises until January 2024. What is in dispute at this time is the payment of utilities. In this context, the question that must be asked by the arbitrator, is whether, as a part of the rental agreement, the tenant agreed to pay the utilities for the entire property, including the separate downstairs unit.
22. In this instance, there is no written agreement clearly identifying the terms and conditions of the rental agreement. Therefore, the arbitrator must rely on the verbal testimony of the parties, as well as the evidence submitted. A review of the aforementioned has determined that, on the balance of probabilities, the verbal rental agreement included the condition that the tenant would accept responsibility for the payment of utilities. An understanding of this arrangement was implied by tenant1 when she had the utilities account transferred to her name upon moving in to the premises, and continued this arrangement until January 2024.
23. Evidence provided by the tenants suggesting that they had, on more than one occasion over the four years of tenancy, discussed the issue with the landlord and offered alternate options. This would suggest that the tenants were fully aware of what the utilities payment included. Their concerns regarding the increased costs associated with this term are noted, as well as their attempts to renegotiate their agreement in this regard; however, in point of fact, they entered into this rental agreement and there were no subsequent changes or modifications agreed upon between the tenants and landlord. It is clear that the tenants feel that the arrangement was unjust, however, the original terms of the rental agreement were not contravened by the landlord.

Decision

24. The tenants claim for compensation for utilities paid during their tenancy fails.

Issue 2: Refund of Rent- \$1,800.00

Tenants Position

25. The tenants are seeking compensation in the amount of \$1,800.00 due to the multiple changes in rent during their tenancy without being given proper notice. Along with their application, tenant1 also provided a Rental Ledger (Exhibit T #3) as below:

15-Dec-22	December Rent	\$900.00	\$900.00	\$0.00	
15-Jan-23	January Rent	\$950.00	\$950.00	\$0.00	
26-Jan-23	Snow Services removed		\$50.00	\$0.00	since rent increased
15-Feb-23	February Rent	\$950.00	\$950.00	\$0.00	per month 5
15-Mar-23	March Rent	\$950.00	\$950.00	\$0.00	
15-Apr-23	April Rent	\$950.00	\$950.00	\$0.00	
15-May-23	May Rent	\$950.00	\$950.00	\$0.00	
15-Jun-23	June Rent	\$1050.00	\$1050.00	\$0.00	since rent increased
15-Jul-23	July Rent	\$1050.00	\$1050.00	\$0.00	
15-Aug-23	August Rent	\$1050.00	\$1050.00	\$0.00	
15-September-23	September Rent	\$1000.00	\$1000.00	\$0.00	
15-October-23	October Rent	\$1000.00	\$1000.00	\$0.00	
15-November-23	November Rent	\$1000.00	\$1000.00	\$0.00	
15-December-23	December Rent	\$1000.00	\$1000.00	\$0.00	

26. Based on the ledger provided, the tenants were paying \$900.00 per month prior to January 2023. The tenant testified that in December they were provided one month's notice that their rent was increasing to \$950.00 per month as of January.
27. Additionally, on 26 January 2024 they received a text advising that the landlord would no longer be providing snow clearing services, which they testified as equating to \$50.00 of the total monthly rent payment. Tenant1 testified that this was her understanding of the value of snow-clearing / lawn maintenance as the landlord told her at the beginning of the tenancy that if she did not want snow-clearing services he could deduct another \$50.00 in rent; she testified to opting for the services. This same text also indicated there would be rental adjustments in the summer.
28. In February 2023, a text message from the landlord further referenced an adjustment in the summer at "maybe another \$50.00 each" and in June 2023 the rent was increased to \$1050.00. Tenant1 testified that following this increase, and after she sent the landlord copies of the power bill, the landlord subsequently decreased the rent down to \$1000.00 per month because they were "good tenants".

Landlord Position

29. The landlord testified that he had changed the rent during 2023 as there was an increase in interest rates of the rental property mortgage; and that overall, the rent has only increased by \$100.00 per month. He also noted that on two occasions in the past he reduced the rent to offset the hydro bill.
30. The landlord disputes the assertion that \$50.00 per month of the overall rent was allotted for snow clearing.
31. The landlord stated the tenants had often been late with rent payments and did not provide a notice to terminate the tenancy and as of the date of the hearing (1 February 2024) had not paid rent for February 2024.

Analysis

32. The *Residential Tenancies Act* is clear in terms of required timelines for increases of rent for a month-to-month tenancy. As defined under Section 16:

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;

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:

”
(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.*

33. In this instance, more than one rental increase occurred in a 12-month period, insufficient notice was provided for the increases, and the increases themselves failed to meet the standard requirements as per 16(4). These rental increases are in contravention of the *Act*.
34. Further to the above, section 16 of the *Act* also notes:

(5) Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the

discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.

35. The tenants claim an increase in rent due to the discontinuation of snow-clearing /lawn maintenance, which the landlord claims was never a portion of the rent. Regardless of whether snow-clearing / lawn maintenance was an explicit term with a set value in the initial rental agreement, evidence demonstrates that it was a service provided and enjoyed by the tenants up to the point of discontinuance. The loss of this service is considered a rental increase, and \$50.00 per month is a reasonable valuation.
36. The tenants shall be compensated for rental monies paid for rent increases that are deemed in contravention of the *Act*. However, a review of the rental ledger submitted in support of the application for refund of rent in the amount of \$1800.00 has determined a mathematical error. The revised ledger demonstrates:

Month	Rental Increase (above \$900.00)	Snow/lawn maintenance	Total per month
January-23	\$50.00	\$50.00	\$100.00
February-23	\$50.00	\$50.00	\$100.00
March-23	\$50.00	\$50.00	\$100.00
April-23	\$50.00	\$50.00	\$100.00
May-23	\$50.00	\$50.00	\$100.00
June-23	\$130.00	\$50.00	\$180.00
July-23	\$150.00	\$50.00	\$200.00
August-23	\$150.00	\$50.00	\$200.00
September-23	\$100.00	\$50.00	\$150.00
October-23	\$100.00	\$50.00	\$150.00
November-23	\$100.00	\$50.00	\$150.00
December-23	\$100.00	\$50.00	\$150.00
		Total	\$1,680.00

Decision

37. The tenants claim for rent reimbursement succeeds in the amount of \$1,680.00.

Summary of Decision

38. The tenants application to be compensated for utilities paid during the tenancy does not succeed.
39. The tenants claim for rent reimbursement succeeds in the amount of \$1,680.00.

23 May 2024
Date



Michael J. Reddy
Residential Tenancies Office