

Residential Tenancies Tribunal

[REDACTED] Decision 19-0580-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:25 a.m. on September 9, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED] represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to the tenant, did not attend the hearing.

Preliminary Matters

4. A hearing was held in July 2019 for the same unit for the payment of rent and late fees.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the number on file for the tenant but the number was no longer in service. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with the application for dispute resolution 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 he/she has been properly served.

6. The affidavit of service submitted by the landlord shows that the notice of this hearing was sent electronically to the tenant on July 30, 2019 and the tenant has had 44 days to provide a response. The landlord presented a copy of the e-mail along with a copy of an e-mail from the tenant dated June 11, 2019. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Payment of utilities in the amount of \$412.21;
 - b. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case is Section 20 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Payment of utilities - \$412.21

Landlord Position

10. The landlord testified that a verbal month to month tenancy started on April 1, 2019 with rent set at \$1515.00 per month and the tenant was responsible for her own utilities. The tenant moved into unit [REDACTED], [REDACTED], St. John's on December 1, 2016 with rent set at \$950.00 per month. On September 21, 2018 there was a fire in the tenant's unit and she moved into unit [REDACTED], [REDACTED] on/or about October 1, 2018 on a temporary basis while the landlord was repairing the unit. On February 26, 2019 the tenant sent a letter stating she was vacating unit [REDACTED] on March 31, 2019. The repairs were completed by the end of February 2019 but the tenant did not move back into unit [REDACTED]. She continued to live at unit [REDACTED]. In April 2019 when the tenant decided to stay at this unit she never had the power bill converted to her name nor did she pay any rent.

11. The landlord further testified that they gave the tenant a termination notice under section 19 of the Act to vacate on June 17, 2019. On June 7, 2019 they posted a notice of abandonment on the door and they took possession of the unit on June 10, 2019. The cost of the power bills are \$163.55 for April 2019; \$169.23 for May 2019 and \$79.43 for the period June 1 – 10, 2019 for a total of \$412.21. The landlord submitted a copy of a breakdown of the power bills (LL #1).

Analysis

12. I have reviewed the testimony and evidence of the landlord. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the payment of utilities. I find that in April 2019 when the tenant decided to stay at unit █, she verbally agreed to pay her own utilities. She didn't have the utilities converted to her name. Therefore, the tenant is responsible for the utilities for the period April – June 2019 in the amount of \$412.21.

Decision

13. The landlord's claim for payment of the utilities succeeds in the amount of \$412.21.

Issue 2: Hearing Expenses - \$20.00

14. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Landlord Position

15. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

Analysis

16. The cost the landlord incurred to make the application is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the landlord's claim was successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

17. The tenant shall pay the landlord's hearing expenses in the amount of \$20.00.

Summary of Decision

18. The landlord is entitled to the following:

a) Payment of utilities	\$412.21
b) Hearing expenses	<u>\$20.00</u>
c) Total owing to Landlord	<u>\$432.21</u>

November 12, 2019
Date

[REDACTED]
Residential Tenancies Section