

Residential Tenancies Tribunal

[REDACTED] Decision 20-0007-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:15 am on **03 March 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord participated in the hearing (*Affirmed*) and was represented by [REDACTED], QC.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing (*Absent and Not Represented*).
4. The details of the claim were presented as a written term rental agreement set to expire on 14 April 2020 with rent set at \$900.00 per month and due on the 15th of each month. It was stated that no security deposit was collected on this tenancy. The landlord issued a termination notice:
 - a. The notice was dated 02 February 2020 for the intended termination date of 14 February 2020 under section 19 of the legislation indicated.
(Nonpayment of rent)
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The tenant, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, 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*.

The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **21 February 2020** by serving the documents to the tenant personally at the rented premises. The tenant has filed a claim ([REDACTED] [REDACTED]) counter to this matter.

The contact information on file for the tenant was contacted prior to the hearing commencing as a last effort to provide the tenant an opportunity to attend. The following were the results:

- a. [REDACTED]: UNABLE TO ACCEPT A CALL
7. 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 applicant, I proceeded in the tenant's absence.
8. The counter claim ([REDACTED]) is hereby dismissed for the non-appearance of the tenant applicant in that matter.
9. The landlord was seeking the costs associated with legal representation prior to and at the hearing. As this system was set up to ensure that legal representation was not required, any person whether applicant or respondent, choosing to engage legal counsel shall cover their own legal expenses associated with legal representation. The landlord's claim of \$345.00 of legal fees is removed from the claim.
10. The landlord amended the claim at the onset of the hearing to:
 - a. Remove the request for vacant possession as the tenant vacated on or about 28 February 2020.
 - b. To decrease the amount of rent being sought by \$450.00 representing rent owing up to 29 February 2020 only. The new total is \$2750.00

- c. To add electrical charges in the amount of \$816.53 (\$87.49 + \$729.04) reflecting usage up to 29 February 2020.

Issues before the Tribunal

11. The landlord is seeking the following:
 - a) Payment of rent owing **\$2750.00**;
 - b) Payment of Utilities **\$3967.90**;
 - c) Hearing expenses.

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. Also relevant and considered in this case are:
 - a. Sections 34 and 35 of *the Act*; and;
 - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*; and;
 - c. *Policy 9-2 Claims and Counter Claims*;

Issue 1: Rent Owing - \$2750.00

Relevant Submissions

Landlord Position

14. The landlord stated that she had entered into a term rental agreement with the tenant commencing 15 April 2019 and set to expire 14 April 2020. The agreed rent was set at \$900.00 per month (exclusive of utilities) and due on the 15th day of each month with no security deposit collected on this tenancy. The landlord issued a termination notice (**Exhibit L # 7**) on 02 February 2020 for the intended date of 14 February 2020.
15. The landlord stated that the tenant vacated the property on or about 28 February 2020. The landlord further stated that no rent was received from the tenant since October 2019 (**Exhibit L # 2**). The landlord testified that the balance outstanding is \$2750.00 up to and including 29 February 2020. The landlord additionally stated that as of the hearing date 03 March 2020, rent remains outstanding.
16. The landlord is seeking an order for rent in the amount of \$2750.00 up to and including 29 February 2020.

Analysis

17. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
18. Upon examination of the landlord records, it shows a slight difference from what is being claimed. The records include all entries of payments and debts for both rent and electrical and doesn't provide clear indication which is which. I have examined both rent and electrical to the best of my ability with the records provided and have come to the following extraction in Table # 1 below:

Table # 1: Extraction of Rent from Landlord Records

Date	Comment	Due	Payment	Balance
	Bal. Forward	\$ -	\$ -	\$0.00
20-Apr-19	Rent Due	\$ 900.00		(\$900.00)
20-Apr-19	Rent Payment		\$ 900.00	\$0.00
15-May-19	Rent Due	\$ 900.00		(\$900.00)
18-May-19	Rent Payment		\$ 900.00	\$0.00
14-Jun-19	Rent Due	\$ 900.00		(\$900.00)
15-Jun-19	Rent Payment		\$ 900.00	\$0.00
15-Jul-19	Rent Due	\$ 900.00		(\$900.00)
15-Aug-19	Rent Due	\$ 900.00		(\$1,800.00)
22-Aug-19	Rent Payment		\$ 900.00	(\$900.00)
22-Aug-19	Rent Payment		\$ 48.42	(\$851.58)
29-Aug-19	Rent Payment		\$ 800.00	(\$51.58)
13-Sep-19	Rent Payment		\$ 900.00	\$848.42
15-Sep-19	Rent Due	\$ 900.00		(\$51.58)
5-Oct-19	Rent Payment		\$ 51.58	(\$0.00)
15-Oct-19	Rent Due	\$ 900.00		(\$900.00)
15-Nov-19	Repairs Invoice Credit		\$ 435.00	(\$465.00)
15-Nov-19	Rent Due	\$ 900.00		(\$1,365.00)
15-Dec-19	Rent Due	\$ 900.00		(\$2,265.00)
15-Jan-20	Rent Due	\$ 900.00		(\$3,165.00)
15-Feb-20	Rent Due	\$ 900.00		(\$4,065.00)
16-Feb-20	Landlord Credit Back		\$ 450.00	(\$3,615.00)

19. As it is seen above there is a discrepancy between the calculated arrears and the claim of \$2750.00 from the landlord covering the same period. As previously indicated, the landlord records are intertwined and confusing. There is no doubt that the tenant owes the landlord at a minimum, \$2750.00 up to and including 29 February. As this is what the landlord has claimed, this is the maximum award permitted in this decision. As such, the landlord's claim for rental arrears

succeeds in the amount of \$2750.00

Decision

20. The landlord's total claim for rent succeeds as follows:

- a) Rent owing up to 29 February 2020 \$2750.00
- b) Total Arrears **\$2750.00**

Issue 2: Utilities (Electrical) - \$3967.90

Relevant Submissions

Landlord Position

21. The landlord testified that the tenant was required to pay the electrical account which the landlord retained in her name throughout the tenancy. The landlord is claiming \$3967.90 for electrical usage not paid during the tenancy.

22. The landlord submitted into evidence NL Power Invoices (**Exhibit L # 4**) along with a printout of the readings for the property on 17 February 2020 and again on 29 February 2020. The amounts of the electrical can only be calculated using the posted per KWh from NL Power. The invoice amounts and calculated amounts are:

a. 17 Sep 2019 to 17 Oct 2019:	\$401.51
b. 17 Oct 2019 to 18 Nov 2019:	585.80
c. 18 Nov 2019 to 16 Dec 2019:	713.12
d. Dec 16 2019 to 18 Jan 2020:	933.17
e. 18 Jan 2020 to 17 Feb 2020 (Calculated):	984.17
f. 17 Feb 2020 to 29 Feb 2020 (Calculated):	<u>350.13</u>
g. Total Charges	\$3967.90

The calculation follows the following formula:

Current Meter Reading – previous Months Meter Reading = KWh Used.

KWh used x 0.12203 = Charge on Usage

Charge on Usage x 15% HST = HST Billed

Charge on Usage + HST Billed = Charge to Customer.

For (e): 95205-88192 = 7013 KWh x 0.12203 = \$855.80 x HST = **\$984.17**

For (f): 97700-95205 = 2495 KWh x 0.12203 = \$304.46 x HST = **\$350.13**

23. The landlord recorded a payment of \$395.57 on 30 October 2019 (**Exhibit L #2**).

Analysis

24. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the utilities that is being claimed (Electrical) by the landlord actually owed by the tenant.

25. With respect to the utilities being claimed, I agree with the landlord that the charge in principal is the responsibility of the tenant. The cost of heating the rented property is that of the tenant's responsibility for the period of use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. I accept the evidence of the landlord as being reasonable that the tenant's utilized electrical services during the tenancy and failed to compensate the landlord for those services prior to his departure from the premises. I find that based on the records provided, the tenant owes electrical expenses in the amount of **\$3572.33** as determined below:

Electrical charges (17 Sep 2019 to 29 Feb 2020)	\$3967.90
LESS: Payments received (30 Oct 2019)	<u>(395.57)</u>
Total Owing to the Landlord	<u>\$3572.33</u>

Decision

26. The landlord's claim for electrical expenses succeeds in the amount of \$3572.33.

Issue 3: Hearing Expenses

Landlord Position

27. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████) (**Exhibit L #5**). Additionally the landlord paid a fee for service of documents (**Exhibit L #6**) in the amount of \$79.75. The landlord is seeking these costs.

Analysis

28. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

29. The tenant shall pay the reasonable expenses of the landlord in the amount of \$99.75.

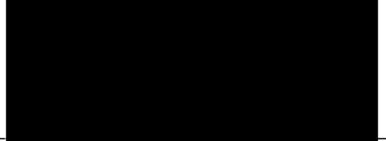
Summary of Decision

30. The landlord is entitled to the following:

a)	Rent Owing	\$2750.00
b)	Utilities	3572.33
c)	Hearing Expenses	<u>99.75</u>
d)	Total owing to Landlord	<u>\$6422.08</u>

08 April 2020

Date


Michael Greene
Residential Tenancies Tribunal