

Residential Tenancies Tribunal

Decision 20-0207-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:11 am on 25 August 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “[REDACTED]” and “[REDACTED]”, participated in the hearing. Their co-applicants, [REDACTED] (“[REDACTED]”), [REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”) did not participate.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also did not participate.

Issues before the Tribunal

4. The tenants are seeking order for a refund of utility payments in the amount of \$1093.24.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

7. The landlord was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 a 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 has been properly served. █ testified that she had served the landlord with notice of the hearing, by e-mail, on 27 July 2020 and she pointed out that that e-mail address that was provided to her in the submitted rental agreement. The landlord has had 28 days to provide a response. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenants, I proceeded with the hearing in her absence.

8. At the hearing, the tenants requested that their application be amended to allow a claim for an order for a refund of a \$400.00 security deposit. In order for this Tribunal to address the disposition of a security deposit, the tenants are required, as per section 14.(11) of the *Residential Tenancies Act, 2018*, to inform the landlord that they have made application to this Tribunal concerning that matter and the landlord must then be provided with 10 days to make a counter application. As the tenants had not indicated on their application that they were seeking a refund of the security deposit and as they had not given the landlord the required time to counter their claim, I cannot hear that matter. The tenants have 1 year from the date their tenancy ended to make an application under section 14.(10)(b) of the *Act* to determine the disposition of the security deposit.

Issue 1: Utilities - \$1093.24

Relevant Submissions

9. █ stated that she had entered into a rental agreement, as sole leaseholder, with the landlord in January 2019. █ was renting the whole house and her roommates, █, █, █ and █ moved in with her between January and May 2019.
10. By November 2019, █, █ and █ had moved out of the unit and █ and █ moved into the basement apartment under a new rental agreement. Their tenancy ended on 31 January 2020.
11. During the tenancy that ran from January to November 2019, █ stated that as a part of the rent that was paid to the landlord was included the provision of cable, internet and electrical utilities. She testified, though, that she also had a verbal agreement with the landlord that should the charges for the electrical utilities exceed \$350.00 in a single month, █ and her 4 roommates would pay the excess amount.
12. With their application, the tenants had submitted a document they had received from the landlord, dated 01 October 2019, informing them that they had exceeded their agreed electricity consumption of \$350.00 in each of January, February, March, April and May 2019. The total amount in excess of the monthly allotment of \$350.00 for those 5 months came to \$1093.24. The landlord had

apportioned that amount between [REDACTED] and 4 her roommates based on when they had moved into the premises.

13. [REDACTED] stated that this amount was paid to the landlord as agreed.
14. However, she argued at the hearing that this verbal agreement she had entered into with the landlord was unreasonable and she did not agree that she should have to pay the amount the landlord had charged her. In particular, she pointed out that from January to March 2019 there were only 3 people living at the unit, but when [REDACTED] and [REDACTED] moved in in April and May 2019, the cap of \$350.00 did not change, even though there were now 5 people living in the apartment.
15. The tenants are seeking a refund of that \$1093.24 they had paid to the landlord for their excess electricity consumption from January to May 2019.

Analysis

16. It was [REDACTED]'s testimony that she had verbally agreed to pay to the landlord any electrical charges which were in excess of \$350.00 per month.
17. Although, looking back, the tenants may now have regrets about the agreement they had entered into, or they may think that they ought to have negotiated a different deal with the landlord, that is a matter which cannot be remedied by this Tribunal. As the dictum goes: let the buyer beware (*caveat emptor*).
18. It is not the role of this Tribunal to review agreements or contracts between landlords and tenants, which have been freely entered into, to assess them for their fairness. The only circumstance in which an agreement or contract would be declared void is if it is in contravention of the legislation set out in the *Residential Tenancies Act, 2018* or some other Act of the province. There was also no evidence submitted at the hearing to suggest that the tenants had entered this agreement under duress and there was no evidence tabled to suggest that the landlord had charged them for electricity for which they did not consume. As such, the tenants' claim does not succeed.

Decision

19. The tenants' claim for a refund of their utility payments does not succeed.

28 October 2020

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal