

IN THE MATTER between **T.P.**, Applicant, and **R.B.**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5
(the "Act");

AND IN THE MATTER of a hearing before **Hal Logsdon**, Rental Officer,

BETWEEN:

T.P..

Applicant/Landlord

-and-

R.B.

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 21, 2023
<u>Place of the Hearing:</u>	Yellowknife, NT via teleconference
<u>Appearances at Hearing:</u>	R.M., representing the Applicant
<u>Date of Decision:</u>	November 27, 2023

REASONS FOR DECISION

The Respondent was personally served with a Notice of Attendance on October 23, 2023 but failed to appear at the hearing. The hearing was held in his absence.

The tenancy agreement between the parties was made in writing for a one-year term commencing on August 20, 2021 and was renewed as a monthly tenancy on expiry. The tenancy agreement was terminated on June 30, 2023 when the Respondent vacated the premises.

The Applicant alleged that the Respondent had breached the tenancy agreement by failing to pay for electricity during the term of the tenancy and sought an order requiring the Respondent to pay the costs of electricity which had been paid on his behalf.

The account for electricity was in the landlord's name when the tenancy began. The Applicant expected the Respondent to establish the account in his name and pay the electrical bills during the term of the tenancy. The Respondent did not establish an account and the electrical bills continued to be sent to and paid by the Applicant.

The Applicant did not notice they had been paying the electricity until February, 2023. The Applicant contacted the Respondent on February 3, 2023 demanding payment of the accrued electrical costs. On February 13, 2023 the Respondent acknowledged his "oversight" and promised to send the Applicant his cheque and contact the electrical supplier. No payments have been received by the Applicant.

The Applicant provided the invoices for electricity in evidence. It appears that all electrical consumption was billed using a non-domestic rate which is significantly higher than the rate which would have been charged to the Respondent had the account been in his name. The total amount of the invoices paid by the Applicant is \$6854.61.

The Tenancy Agreement

Article 22 of the tenancy agreement sets out the utilities the landlord is obligated to pay,

Utilities and Other Charges

22. The landlord is responsible for the payment of the following utilities and other charges in relation to the property: water/sewer and garbage collection.

Unlike the tenancy agreement format set out in the *Regulations*, this agreement does not set out any tenant responsibilities for services and facilities, including utilities. On July 20, 2021 (before the start of the tenancy agreement), the Applicant sent an email to the Respondent attaching the tenancy agreement for his signature, rules and regulations, utility company information including contacts for the utility suppliers and a credit card authorization form. As well, the email reminded the Respondent to transfer the fuel and electricity accounts to his name as of August 20, 2021.

The Applicant argues that although the tenancy agreement does not explicitly set out the tenant's obligation to pay for electricity, the July 20, 2021 email clearly sets out that obligation and has the effect of amending the tenancy agreement. I respectfully disagree. A tenancy agreement that is reduced to writing can only be amended in writing and must be signed by both parties. In my opinion, an email sent by one party to the other can not amend a tenancy agreement

However, in my opinion, the tenancy agreement as written does obligate the Respondent to pay for these expenses. There are only four utilities (water, sewer, garbage and electricity), three of which are the explicitly set out in the agreement as the responsibility of the landlord. There are only two parties to the tenancy agreement. If electricity is not the Landlord's responsibility, it must therefore be the tenant's.

The emails sent by Applicant to the Respondent should have clarified his obligation to establish an account and pay for electricity as well as steps he should take with the supplier to amend the rate charged. I find the Respondent in breach of his obligation to pay for electricity during the term of the tenancy agreement.

The Electrical Rate Charged

The rate structure of electricity in the community is reduced for domestic use. Individuals and households are charged a lower rate than commercial customers. When the premises are vacant, the Applicant is charged a higher rate than a tenant occupying the property as a tenant. During the term of this tenancy, all of the electrical consumption of the premises was charged to the Applicant using the higher rate. All of the monthly bills were paid in full.

It was not possible to determine what effort, if any, the Respondent took to have the account retroactively placed in his name and the rate adjusted accordingly. An email to the electrical supplier and copied to the Applicant was provided in evidence but the results of the inquiry are

not known. It is clear, however that the Respondent was made aware that the account should be in his name. In my opinion, it is not unreasonable to expect the Respondent to pay the Applicant the amounts they were charged and paid as any action to amend the billing and rate charges was the responsibility of the Respondent. I find outstanding electrical charges to be \$6854.61

The Security Deposit

The Applicant collected a security deposit of \$1350 at the commencement of the tenancy. The Applicant stated that they have not returned the deposit and sought direction to apply the deposit to the electrical charges. The Applicant acknowledged that the deposit could not be retained for outstanding electrical charges as it is not rent or repairs of damages. There was no evidence of damages to the premises or arrears of rent. I find interest of \$0.25. An order shall issue requiring the Applicant to pay Respondent the deposit and accrued interest totalling \$1350.25 as an offset to the electrical costs.

Summary

An order shall issue requiring the Respondent to pay the Applicant electrical costs net of the security deposit and interest offset in the amount of \$5504.36.

Hal Logsdon
Rental Officer