INTRODUCTION

[1] This decision determines an application filed with the Residential Tenancy Office ("Rental Office") under the *Residential Tenancy Act* ("*Act*").

[2] Further, this decision is determining the rights and obligations of the Landlord and the Tenant under clause 85(1)(a) of the *Act*.

[3] The Tenant seeks a determination that the utilities: water, electricity, heat and hot water ("Utilities") are included services under the tenancy agreement and that the Landlord must compensate the Tenant for the expenses incurred by the Utilities.

DISPOSITION

[4] The Utilities are included services under the tenancy agreement.

[5] The Landlord must reimburse the Tenant for the Utilities, in the amount and timeline below.

[6] Once the Tenant vacates the Unit and the tenancy agreement ends, then the Landlord can exclude the Utilities from future tenancy agreements.

BACKGROUND

[7] The Unit is a one-bedroom and one-bathroom apartment in a 39-unit building ("Residential Property").

[8] On December 9, 2024 the parties entered into a tenancy agreement. The tenancy agreement is a written, fixed-term agreement for the period of January 1, 2025 to December 31, 2025. The Tenant moved into the Unit early on December 10, 2024.

[9] Rent is $1,336.04 due on the first day of the month. A $653.00 security deposit was paid. The parties disagree about which utilities are included services.

[10] On January 16, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* ("Application") with the Rental Office. The Application was amended on April 3, 2025.

[11] On April 16, 2025 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for May 8, 2025.

[12] On May 1, 2025 the Rental Office emailed the parties a 132-page evidence package.

[13] On May 2, 2025 the Rental Office emailed the parties a 7-page additional evidence package.

[14] On May 8, 2025 the Tenant, the Landlord's representative ("Representative") and the Landlord's witness ("LW") (LW is the Landlord's leasing representative) joined the hearing for determination of the Application. The parties confirmed receipt of the evidence package and the additional evidence package and confirmed that all evidence sent to the Rental Office was included.

ISSUE

A. Are Utilities included services under the tenancy agreement?

ANALYSIS & FINDINGS

[15] The parties disagree regarding the services that are included in the monthly rent. The evidence presented raises a legal issue regarding whether or not a unilateral mistake to a term in the tenancy agreement should be corrected or upheld.

[16] The parties agreed upon the following evidence.

[17] Around November 18, 2024 the Tenant viewed an advertisement for the Unit. The advertisement was silent about the Utilities. Over the following weeks the parties corresponded by email. On November 22, 2024 the Tenant and LW viewed the Unit. The parties disagree on particular points within the email corresponds and the conversation during the November 22 viewing.

[18] On December 7, 2024 the Landlord forwarded a signed copy of the *Form 1 – Standard Form of Tenancy Agreement* ("Tenancy Agreement") to the Tenant. The Tenancy Agreement stated:

> "*The following services and facilities are **included** in the rent (list all services and facilities)*
> *Outdoor Parking, water, heat, electricity, & hot water*
> *Underground Parking if available.*" [Emphasis added].

The Tenant signed the Tenancy Agreement and emailed it back to the Landlord.

[19] On December 10, 2024 the Tenant moved into the Unit and the Utilities were installed.

[20] Maritime Electric required a security deposit ("Deposit") which the Tenant paid once the balance showed up on her Maritime Electric account. On January 3, 2025 the Tenant sent a texted message to the Residential Property's managers regarding the Deposit.

[21] On January 6, 2025 LW emailed the Tenant, which stated:

> [Tenant]
> *"I looked over the lease and by mistake, the electric, hot water and electric heat was under the inclusion list, instead of excluded.*
> *I know when we viewed the unit, I did mention that the power bill with the elec heat and hot water was a bill you would be responsible for. So sorry for the inconvenience.*
> *I will type up a new page with the corrections and email it to you so I can forward along the correct one to head Office in Halifax.*"

[22] The parties' disputed evidence is summarized as followed.

Landlord's Evidence

[23] The Representative stated that she made the mistake when creating the Tenancy Agreement. Utilities were supposed to be excluded services, but she mistakenly included the services in the rent as stated in the Tenancy Agreement.

[24] The Representative submitted other redcated tenancy agreements in the Residential Property showing utilities as excluded services. The Representative stated that the Residential Property is a newer building and utilities are excluded for all the other rental units.

[25] In response to the Tenant's submissions below, the Representative stated that included in the evidence is an internal document used by the Landlord. This document has information regarding the Unit, the prospective tenant and general details about the tenancy such as the length of the tenancy, the rent payable, the security deposit and the name of the tenant(s). The date on the document is November 1, 2024. The Representative stated that it is common practice for the Landlord to date such documents the first of whatever month the document is being completed, despite it being actually the first day of the month.

[26] In response to the Tenant's submissions below, the Representative stated that the Landlord does not "track" energy and hydro usage.

[27] LW stated that she viewed the Unit with the Tenant and the Tenant's father. LW stated that the parties discussed that Utilities were the Tenant's responsibility. LW stated that each rental unit has its own meter for utilities, i.e., water and electricity.

[28] LW stated that the email correspondence with the Tenant also shows that the Tenant knew that electricity was her responsibility, because the Tenant asked about the name of the electric company.

[29] LW stated that once the included Utilities mistake was noticed she immediately contacted the Tenant by email to inform the Tenant of the mistake and have it corrected.

[30] The Landlord disagrees with the Tenant's request on the Application. The Landlord wants the terms of the Tenancy Agreement corrected and that the Tenant continues paying the Utilities. This would also determine the rights and obligations of the parties under clause 85(1)(a).

Tenant's Evidence

[31] The Tenant wants the terms of the Tenancy Agreement to be upheld and reimbursed for the expenses incurred while paying for the Utilities since moving into the Unit on December 10, 2024.

[32] The Tenant stated that the Landlord created, signed and forwarded the Tenancy Agreement to her. The Tenant stated that she reviewed the Tenancy Agreement, did not see any issues and signed the Tenancy Agreement. The Tenant stated that she relied on the Landlord to provide an accurate Tenancy Agreement where the parties agreed on the terms.

[33] The Tenant stated that the Landlord submitted a document dated November 1, 2024, however, she did not apply for the Unit until November 19, 2024.

[34] The Tenant disagreed with LW's testimony.

[35] The Tenant stated that her father was not present for the viewing of the Unit. The Tenant stated that LW did not mention that Utilities were excluded from the rent. The only mention of utilities during the November 22, 2024 viewing was that the Landlord tracks the usage of energy and hydro. The Tenant stated that the only services discussed was outdoor parking.

[36] The Tenant stated that she opened a Maritime Electric account in her own name because she thought it was needed for tracking usage. The Tenant stated that she is a first time renter and she was unsure of the standard practice around utility accounts. The Tenant stated that the Tenancy Agreement includes Utilities, therefore, she did not think it was unusual to have the Utilities' account in her own name.

[37] The Tenant stated that the Landlord provided many documents and information sheets. Particularly, one of the documents said *Addendum: Sustainability*. The Tenant stated that his document said that the Landlord tracked energy and water. The document was submitted into evidence (pages 37 and 111).

[38] The Tenant stated that she paid the Deposit and continued to pay the electricity and hydro bill because she did not want to risk negative impacts to her financial record.

[39] The Tenant submitted her Maritime Electric and Wyse Hydro bills from December 2024 to March 2025. The Tenant is seeking reimbursement of these expenses, in the total amount of $751.92 (pages 54 to 56 and 63 to 81).

Determination – The Mistake

[40] I find that the evidence does not establish that the Landlord acquiesced in the mistake. Both parties promptly expressed their views and concerns regarding the mistake. The Tenant 's payment of Utilities does not establish acquiescence in these circumstances.

[41] I further find that the Landlord clearly intended for the Tenant to pay for the Unit's Utilities. The Representative made a mistake that led to Utilities being stated as an included service in the Tenancy Agreement.

[42] Mistake is a common law doctrine in contract law. Section 101 of the *Act* states:

> *Except as modified or varied under this Act, the common law respecting landlords and tenants applies in Prince Edward Island*.

[43] The Tenant did not prepare the Tenancy Agreement.

[44] The parties disagree about what was discussed during the oral conversation on November 22, 2024. The Tenant simply read and signed the Tenancy Agreement prepared by the Landlord. The question is whether the Landlord is bound by the mistake. The *Act* is silent on situations regarding mistake. I must consider the common law, as permitted under section 101 of the *Act*.

[45] I now must determine whether the inclusion of Utilities in the Tenancy Agreement was a mistake which ought to be corrected for the benefit of the Landlord.

[46] Both the Rental Office and the Island Regulatory and Appeals Commission ("Commission") have in past decisions commented on situations where a mistake was made in a tenancy agreement (see Commission Orders LR09-14 and LR12-30). The Rental Office decisions were under the previous rental law, the *Rental of Residential Property Act* ("Former Act"), which means these decisions were not published on the Rental Office's website. However, those decisions are LD09-180 and LD15-142.

[47] I note that the Former Act, like the *Act*, was silent on situations regarding mistake.

[48] In Rental Office Order LD09-180, part of the legal analysis was considering the Supreme Court of Canada's decision in *Sylvan Lake Golf & Tennis Club v. Performance Industries Ltd.* 2002 SCC 19 ("*Sylvan*"). The Court in that case noted that high hurdles are placed in the way of a business person who claims that they should not be held to the written terms of a document which he or she has signed and which, on its face, seems perfectly clear (paragraph 35).

[49] It was determined in LD09-180 that the landlord did not *clear those hurdles* and that it is *bound by its mistake*. In Order LR09-14, the Commission upheld the Rental Office's Order LD09-180 and stated:

> "*The Commission finds that the rental agreement speaks for itself. The Commission finds that the principles of law enunciated in the cases cited by the Director are sound*."

[50] I further note that the landlord in Orders LD09-180 and LR09-14 is the same landlord as in this case.

[51] The Rental Office in Order LD15-142 stated:

> "*The Commission ruled that the lessor was bound by its mistake and upheld the Director's Order for a return of rent. Similarly, in Order LR12-30, on a similar fact situation, the Commission found that the lessor was bound by its mistake.*"

[52] It appears that in previous Rental Office and Commission decisions, a landlord is bound by its mistake if the landlord does not meet the required "*high hurdles"* outlined by the Court in *Sylvan*. Reviewing the test set out and applying it to the facts in this case, I find that the Landlord has not cleared those hurdles and that it is bound by its mistake.

[53] Particularly, I find that there is no direct and objective evidence to determine that there was an oral arrangement or written arrangement that Utilities were excluded. The parties provided disputed evidence about what was said during the conversation on November 22, 2024.

[54] I find that part of the test includes the requirement that such proof be "convincing proof" i.e., proof that may fall well short of the criminal standard, but which goes beyond the sort of proof that only reluctantly and with hesitation scrapes over the low end of the civil "more probable than not" standard (*Sylvan* paragraph 41). I find that the Landlord has not established this "convincing proof" which would provide correction.

[55] Further, I note that if the party seeking to enforce the document knew or had reason to know of the other's mistake the document should not be enforced (*The Law of Contracts 7th Ed. Thomson Reuters 2017 pg.211*).

[56] The evidence does not support a finding that the Tenant knew or ought to have known of the Landlord's mistake. The Tenant did not prepare the Tenancy Agreement and there is no direct and objective evidence to establish what was discussed between the Tenant and LW on November 22, 2024. The only written communication between the parties are email correspondence. In these correspondence the Tenant does ask questions about the electricity provider. However, none of the correspondence suggest any affirmative statements that Utilities were the responsibility of the Tenant.

[57] I accept the Tenant's evidence, particularly that the Tenant was a first time renter and unfamiliar with the Utilities account setup. The Tenant merely asking about the electricity provider and account set up does not alone conclude the Tenant would have known she was responsible for paying the Utilities. Further, I accept the Tenant's evidence that she genuinely believed that opening a Utilities account in her name was solely for tracking usage and not for payment purposes.

[58] I find that the Landlord provided the Tenant with an information sheet, with a page called:

> *Addendum: Sustainability* where it clearly states that the Landlord ***tracks energy and water data across its properties to manage consumption trends, assess the impact of conservation measures, and enhance sustainability initiatives****. Collaboration with residents and utility providers is essential to access vital data on tenant spaces. To facilitate this* [Landlord] *representatives may read water and electricity meters to identify maintenance issues, facilitate comprehensive reporting and benchmark sustainability efforts*. [Emphasis added].

[59] The Landlord's position suggests that the Tenant knew or ought to have known since she inquired about the electricity and put the Utilities into her own name. However, I find that the combination of what was clearly stated in the Tenancy Agreement, along with the contents of the *Addendum*, and the unfamiliarity and inexperience of being a tenant, it was reasonable for the Tenant to inquire, yet still believe that the Utilities being placed in her own name was only for tracking purposes and not for payment purposes.

[60] Therefore, I find that the Tenancy Agreement should not be corrected for the benefit of the Landlord and that the Landlord is bound by its mistake.

[61] The Application is allowed. The Landlord must also reimburse the Tenant for the expenses incurred since the beginning of the tenancy regarding Utilities. As of the date of the hearing, the evidence establishes that the Landlord must reimburse the Tenant $451.92 by the timeline below.

[62] I note that part of the Tenant's claim includes the $300.00 Deposit required by Maritime Electric. I do not have the jurisdiction (authority) to intervene between an arrangement between Maritime Electric and a tenant. I noted, however, that at some point Maritime Electric will return the Deposit to the Tenant.

[63] I further note that the Tenant likely incurred expenses from the hearing date to the issuance of this decision. The Tenant will provide the Landlord with the invoices/receipts for the incurred expenses for Maritime Electric and Wyse for this period of time. The Landlord will compensate or credit the Tenant the amount for this period of time by the same timeline provided below.

[64] If the Landlord fails to compensate the Tenant the additional expenses after receiving the receipts/invoices from the Tenant, by the timeline provided below, then the Tenant may make application to the Rental Office seeking the additional expenses.

Future Tenancy Agreements & the Unit

[65] I note that my finding that Utilities are included in the Tenancy Agreement is only effective for the length of the Tenancy Agreement and where the Tenant continues to reside in the Unit. Once the Tenancy Agreement ends by a permitted reason under the *Act* and the Tenant vacates, then the Landlord may correct its mistake and have Utilities excluded from the rent.

[66] I am determining the rights and obligations of the Landlord and the Tenants and requiring the Landlord who contravened an obligation of the Tenancy Agreement to comply with or perform the obligation. In this case, it is the Landlord's obligation to include Utilities in rent for the Tenancy Agreement (see clauses 85(1)(a), (c), (d) and (p) of the *Act*.

[67] This clarification is necessary because under the Former Act, landlords could apply to the Rental Office for a greater than allowable rent increase. This rent increase had no restrictions. The past Rental Office and Commission decisions mentioned in this Order reference the landlord's ability as such under the Former Act.

[68] However, under the *Act*, landlords are restricted to only a 3.0% additional rent increase. To lower the lawful rent due to a mistake, when rent goes with the rental unit and not the tenant, with only the ability to increase the rent by 3.0% above the allowable annual guideline would be unfair in these circumstances.

IT IS THEREFORE ORDERED THAT

1. The Utilities which are: water, electricity, heat and hot water are an included service under the Tenancy Agreement.

2. The Landlord must reimburse the Tenant for the utility expenses incurred as follows:

    a) The Landlord will pay the Tenant $451.92 by June 30, 2025; or
    b) The Landlord will offset future rent in the amount of $451.92.

3. Once the Tenancy Agreement ends and the Tenant vacates the Unit, the Landlord can exclude Utilities from the rent.

DATED at Charlottetown, Prince Edward Island, this 3rd day of June, 2025.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within **20 days of this Order**. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.