



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

PSF & MNDC

Introduction

This hearing dealt with the tenant's application to clarify the terms of the tenancy respecting the payment of utilities and to have the landlord pay for the cost of past utilities since there was no term in the tenancy agreement requiring that the tenant pay for the hydro costs.

Both parties appeared for the hearing and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Is the tenant responsible for outstanding Hydro utility costs totally \$1,412.94? Can a term be added to the tenancy agreement for the tenant to pay Hydro utilities as part of the tenancy agreement?

Background and Evidence

This tenancy began around October 1, 2007 but the tenant did not begin paying rent until December 1, 2007. There was no written tenancy agreement at the time and the monthly rent was \$540.00 and a security deposit of \$270.00 was paid on September 16, 2007.

The tenant stated that the landlord agreed he could replace the carpeting in the rental unit and in exchange for his labour the tenant did not have to pay rent for October and November 2007. The tenant submitted that at no time was it indicated to him that he was responsible for the payment of the Hydro utility for the rental unit.

The landlord conceded that there was no tenancy agreement; however, indicated that all rentals normally have a tenancy agreement and require the occupant to put the Hydro in their name. The landlord submitted that this is common knowledge and that the tenant would have, or should have been, aware of this and transferred the Hydro after taking possession of the rental unit. The landlord submitted that it was overlooked and not discovered until almost two years later.

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Upon discovering the situation the landlord had the tenant sign a tenancy agreement on March 31, 2009 which added the term that he would be responsible for the Hydro. As a result the tenant is now responsible to pay a security deposit of approximately \$195.00 to retain the Hydro in his name. As well, apparently at the request of the landlord, BC Hydro reversed all the previous charges of the Hydro and sent a bill to the tenant for the sum of \$1,412.94.

Although no documentation was provided the tenant alleged that the landlord attempted to put the Hydro into the tenant's name around February 2008 but without his consent and without a tenancy agreement. The landlord stated that he was not aware of this and denied any knowledge that this was attempted.

Analysis

I find that the landlord is bound by how business has been conducted since the tenancy began. Although the landlord's standard practise might be to not include Hydro in the payment of rent, this is not how the parties conducted business with this tenancy. The parties did not enter into a written tenancy agreement and I am not satisfied that the parties made any verbal agreement that the tenant would pay the hydro utility. In fact, I am satisfied that it was not discussed and the landlord implicitly included the hydro utility in the rent for the next 18 months. It is not enough to say that the tenant should have known that the hydro was not included. The landlord had the duty to have pursued this long ago and to have mitigated any resulting loss.

I grant the tenant's application. I find that the parties are bound by the terms of the original oral tenancy agreement and that the hydro utility is included in the rent and payment of the back utility charges are the landlord's responsibility.

I Order that the landlord pay the outstanding utility bill for the sum of \$1,412.94 that is currently in the tenant's name. During the hearing the landlord indicated that BC Hydro is able to reverse the billing. However, if this is not the case the tenant may file a further application seeking a monetary Order for the sum of \$1,412.94.

Conclusion

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

The tenant's application is granted. I have determined that the landlord is estopped from changing the terms of the original verbal tenancy agreement and the tenant is not responsible for the hydro bill of \$1,412.94.



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I accept that as of March 31, 2009 the parties entered into a new, written tenancy agreement. As part of this tenancy agreement the tenant and landlord have agreed that the tenant is responsible for the hydro utility. Both parties are bound by the terms of this written tenancy agreement going forward.

Dated: July 23, 2009.

Dispute Resolution Officer