



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application to set aside a Notice to End Tenancy for Unpaid Rent and Utilities.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent and Utilities, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

The Landlord and the Tenants agree that both Tenants have resided in this residential complex for many years, albeit they both resided in a different rental unit within the residential complex prior to moving in the rental unit that is the subject of this dispute. The parties agree that the Tenants moved into this particular rental unit sometime during the latter portion of 2005 or the early part of 2006. The parties agree that the male Tenant moved out of this rental unit into a different unit in the residential complex in November of 2008, at which time the female Tenant continued to occupy this rental unit with a different co-tenant. The parties agree that the former co-tenant vacated the rental unit and that the male Tenant moved back into the rental unit in February of 2009.

The Landlord and the Tenant agree that the male and female Tenant signed a tenancy agreement for the rental unit on January 23, 2006. They agree that they signed another tenancy agreement on February 20, 2009. Both of these tenancy agreements were submitted as evidence by the Landlord, although the Tenants deny being served with an evidence package that included a copy of the second tenancy agreement. The Tenants declined the opportunity to adjourn this hearing so they could be served with a copy of the missing tenancy agreement, as they acknowledged that one was signed and they wished to resolve this dispute expeditiously.

With the exception of dates and the amount of rent payable, the terms of the two tenancy agreements are the same. Both agreements declare that a refrigerator, stove, garbage collection, sewage disposal and water are included in the rent. Neither agreement indicates that gas or hydro is included in the rent.

For a period of time during this tenancy, this rental unit was managed by the Guardian Public Trustee. During that period an agent for the Guardian Public Trustee entered into a new tenancy agreement with the Tenants, which was signed by both Tenants. The Landlord was not present when this tenancy agreement was signed, nor was he aware that a new tenancy agreement was being signed by the Guardian Public Trustee. The female Tenant stated that when this tenancy agreement was signed she advised the agent for the Guardian Public Trustee that heat was included in her rent, at which time the agreement was amended to show that heat was included in the rent.

After much conversation about whether heat was included with the rent and about which tenancy agreement accurately reflected the terms of this tenancy agreement, the Landlord and the Tenant agreed that they would like to reach a mutually agreed upon settlement to this dispute. The parties agreed to settle this dispute under the following terms:

- The Landlord will withdraw the Notice to End Tenancy for Unpaid Rent and Utilities, dated June 30, 2009, that was served to the Tenants
- The Landlord will not require the Tenants to pay any of the Terasen gas bills that accrued prior to August 24, 2009
- The Landlord and the Tenants agree that effective August 24, 2009, the Tenants will be responsible for paying one-third of the gas bill for the entire residential complex once they have been provided a copy of the gas bill

Conclusion

On the basis of the settlement agreement reached by the parties, I find that the Notice to End Tenancy, dated June 30, 2009, is of no force or effect, and I order that this tenancy continues until it is ended in accordance with the Act.

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*.

Dated: August 25, 2009.

Dispute Resolution Officer