



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: RR FF O

Introduction

This hearing dealt with an application by the tenants for a reduction in rent. One of the tenants and both landlords participated in the teleconference hearing.

Issue(s) to be Decided

Are hydro and cable included in the rent?

Should the tenants be compensated for damage to their vehicle?

Background and Evidence

The rental unit in question is a condo in a strata building. The landlord advertised the unit for \$1150 plus utilities and cable. The landlord and the tenants emailed each other in early November 2008 and came to an agreement that the rent would be \$1100. On November 8, 2008 the landlord and tenants signed the tenancy agreement for a month-to-month tenancy to begin on November 30, 2008. The tenancy agreement indicates which equipment, facilities, services and utilities will be included in the monthly rent of \$1100. Several items are checked off, including "cablevision," "heat" and "electric fire place." The rent also includes two parking stalls.

On November 14, 2008 the landlord emailed the tenants and informed them that the landlord notified BC Hydro that they would no longer be paying the bill beginning November 30, 2008. The tenants subsequently arranged to have the hydro and cable for the rental unit put into their own names.

On December 4, 2008 the tenants emailed the landlord regarding some "water / glue /

sand” substance that was dripping down from the concrete deck above one of the tenant’s parking stalls onto their car. The landlord replied by email on the same day, stating that they had spoken to the building manager and the property manager about the leak, and the issue was scheduled to be fixed in the next week or so. The landlord offered to arrange for another parking spot for the tenants, and assured the tenants that they would “do everything in our power to expedite leak repairs on the parking spot you have.” On December 9, 2008 the tenants emailed the landlord and stated that the leaking above the parking stall had stopped, but there may be some damage to their car. On February 25, 2009 the tenants emailed the landlord and stated that the leaking had started again and there was “a pile of grit and resin-like liquid” on the hood of their car that morning. On February 25, 2009 the landlord called representatives of the strata and was told that the leak had not yet been fixed. On August 6, 2009 the tenants paid \$84 to have scratches removed from the hood and trunk of their car.

The tenants submitted that the tenancy agreement makes it clear that cable and hydro are included in the rent. In the hearing the tenant stated that his understanding at the time of signing the tenancy agreement was that cable and hydro were included in the rent. The tenants seek reimbursement of all the hydro and cable they have paid to date, and an order that the landlord pay all hydro and cable from this time forward. The tenants also seek compensation for the \$84 repair to their vehicle.

The response of the landlord was as follows. The landlord acknowledged that due to a drafting error, they mistakenly checked off the cablevision, heat and electric fire place items on the tenancy agreement. The prior understanding of the landlord and the tenants was that cable and hydro were not included, as demonstrated by the ads for the rental unit, the negotiations between the landlord and tenants regarding the rent, and the tenants’ arrangements to have the cable and hydro put into their own names. In regard to the damage to the tenants’ vehicle, the landlord submitted that they took reasonable, timely steps to attempt to address the leaking and they offered to find alternate parking for the tenants. Further, the tenants’ photographic evidence does not clearly demonstrate the alleged damage, and the damage was most likely caused by the tenants themselves when they cleaned the gritty substance off their car.

Analysis

In regard to the cable and hydro, I accept the testimony of the landlord as more credible than that of the tenants. It is more likely than not that if the tenants had truly believed the hydro and cable were included in the rent, they would have raised that issue with the landlord rather than have the hydro and cable put into their own names before the outset of the tenancy. I therefore find that the landlord, as submitted, committed an error in drafting, and that the prior understanding of the landlord and tenants before signing the tenancy agreement, was that cable and hydro were not included in the rent. I therefore find that the portion of the tenancy agreement that states cablevision, heat and the electric fire place are included in the rent are void and unenforceable. The tenants are responsible for cable and hydro, and may not claim against the landlord for these services.

In regard to the damage to the tenants' vehicle, I find that the landlord took reasonable steps to address the leaking. The tenants failed to establish that the damage to their vehicle was caused by the landlord's negligence, or that they themselves did not cause the damage by wiping the gritty substance off their vehicle and thereby causing the scratches. The tenants are therefore not entitled to claim this amount against the landlord.

Conclusion

The application of the tenants is dismissed. The tenants are not entitled to recovery of the filing fee for the cost of their application.

Dated September 29, 2009.